82-2034

No.

In the

Supreme Court of the United States

October Term, 1982

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE COAST OF FRANCE ON MARCH 16, 1978

ASTILLEROS ESPANOLES, S.A.,

Petitioner,

vs.

STANDARD OIL COMPANY (INDIANA), AMOCO INTERNATIONAL OIL COMPANY, AMOCO TRANSPORT COMPANY, CLAUDE PHILLIPS, AND CONSEIL GENERAL DES COTES DU NORD, etc., et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Questions Presented

1. Whether French plaintiffs, as well as Liberian and American claimants, may constitutionally obtain *in personam* jurisdiction in Illinois over a nonresident Spanish shipbuilder to assert tort, indemnity and contribution claims arising out of an oil spill off the coast of France, where the Spanish corporation's sole contact with Illinois involved the negotiation and execution there, with a Liberian corporation, of a contract to build a ship, where the contract was performed entirely in Spain, where no claimant was a party to the contract and where neither alleged tortious conduct nor injury occurred in Illinois.

2. Whether tort claims for property damage incurred by French citizens when an oil tanker discharged crude oil into the ocean off the coast of France in 1978 "arise from" the 1970 execution, in Illinois, of a contract to build the tanker, thus subjecting the nonresident shipbuilder to jurisdiction in Illinois consistent with Due Process and the Illinois long arm statute.

3. Whether a court may subject a nonresident Spanish corporation to jurisdiction in Illinois to answer for alleged negligence occurring only in Spain causing damage only in France by *sua sponte*, without any record support and contrary to long established principles of corporate law, piercing the corporate veils of major American corporate claimants and rewriting a contract in order to find that the Spanish corporation had entered into a judicially created contract with an Illinois resident rather than with the non-party Liberian corporation which signed the contract.

4. Whether a Spanish corporation is entitled to the same Due Process rights and Equal Protection of the Laws as an American corporation, or whether an alien corporation's rights are subservient to judicial economy.*

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* The following entities were parties before the District Court and the Seventh Circuit:
Standard Oil Company (Indiana), an Indiana corporation; Amoco International Oil Company, a Delaware corporation; Amoco Transport Company, a Liberian corporation; Claude Phillips; Astilleros Espanoles, S.A., a Spanish corporation;

• (Continued)

French governmental units as follows: Department Des Cotes du Nord, Binic, Brehat, Erquy, Kerbors, Kerfot, Lanmodez, Lannion, La Roche Derrien, Lezardrieux, Louannec, Minihy-Trequier, Morieux, Paimpol, Penvenan, Perros-Guirec, Planguenoual, Plerin, Plestin-Les-Greves, Pleubian, Pleudaniel, Pleumeur-Bodou, Ploubazlanec, Plouezec, Plougrescant, Plouguiel, Ploulec'h, Ploumilliau, Plourivo, Plurien, Pontrieux, Pordic, Saint-Brieuc, Saint-Michel-En-Greve, Trebeurden, Tredarzec, Tredrez Ploulech'h, Treduder, Tregastel, Tregon, Treguier, Trelevern, Trevou-Treguignec, Troguery, Breles, Brest, Cleder, Goulven, Guimaec, Henvic, Ile De Batz, Ile D'Ouessant, Ile Molene, Lampaul Ploudalmezeau, Landunvez, Lanildut, Le Conquet, Locquenole, Locquirec, Morlaix, Plouarzel, Ploudalmezeau, Ploudalmezeau Portsall, Plouenan, Plouescat, Plouezoc'h, Plougasnou, Plougoulm, Plouguin, Ploumoguer, Saint-Jean-Du-Doigt, Saint-Martin-Des-Champs, Saint-Pabu, Saint-Pol-De-Leon, Sante; Sibiril and Treflez.

French business organizations and private entities as follows: Gerard Boyer, Anna Famel, Jacques Guillou, La Chambre Syndicale des Agents Immobiliers des Cotes du Nord, La Chambre Syndicale des Agents Immobiliers du Finistere, La Federation Nationale des Agents Immobilierrs, La Ligue Francaise de Protection des Oiseaux, La Societe Anonyme la Langouste, La Societe pour l'Etude de la Protection de la Nature en Bretagne, Association de Defense des Victimes Marines Pecheurs de la Catastrophe de l'Amoco Cadiz, Alain Le Bitoux, Le Comite Local des Peches de Brest, Jane Le Creurer, Albert Le Flem, Les Agents Immobiliers Touches Directement et Indirectement et Leurs Mandats Eventuels, Le Syndicat Ostreicole des Abers, Le Syndicat Ostreicole de la Region de Morlaix, Danielle Le Locat, Association des Commercants et Artisans de Tregastel, Union Pleumeuroise pour la Defense des Interets des Commercants et Artisans, Yvette Masmas, Ponant Loisirs S.A., S.A. Armor Nautisme, S.A. Les Bleiz, Ste Tregor Marine SARL, Patrick Caron and Jean-Pierre Touchard.

All of the stock of Petitioner Astilleros is owned by I.N.I., also a Spanish Corporation.

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The Opinion of the United States District Court for the Northern District of Illinois denying Petitioner's motion to dismiss appears in the Appendix to this Petition (App. pp. 1a to 15a), and is reported at 491 F. Supp. 170 (1979).

The Opinion of the United States Court of Appeals for the Seventh Circuit also appears in the Appendix to this Petition (App. pp. 16a to 27a). That decision is not yet reported.

Jurisdiction

The Seventh Circuit's opinion was issued on February 3, 1983. On March 23, 1983 the Seventh Circuit denied Petitioner's motion for rehearing and rehearing en banc (App. p. 28a). The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1254(1).

Statutes Involved

Section 1 of the 14th Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2-209 of chapter 110 of the Illinois Revised Statutes (formerly §17 of chapter 110) provides:

(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) the transaction of any business within this State;

(2) The commission of a tortious act within this State; . . .

(c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.

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Statement of the Case

In February, 1978, a Liberian tanker, the Amoco Cadiz, owned by Amoco Transport Company and under charter to Shell International Petroleum Company Ltd., a Netherlands corporation, loaded a cargo of 220,000 tons of crude oil in Iran and Saudi Arabia and began its

voyage around the African continent to the European ports of Rotterdam, Netherlands and Lyme Bay, United Kingdom. On March 16, 1978 the Amoco Cadiz was proceeding through the English Channel when it lost control of its rudder. Despite the efforts of its Italian crew and similar efforts by a German rescue tug, the vessel went aground, causing the release of its entire cargo of crude oil into the sea. The oil washed ashore along the Breton coastline of France.

The oil caused major damage to French properties and activities. Subsequently numerous French plaintiffs filed actions in the Circuit Court of Cook County, Illinois, against Amoco Transport and others, seeking recovery of damages arising out of the oil spill. Shortly thereafter, Amoco Transport filed a limitation of liability action in the U.S. District Court for the Northern District of Illinois and the state court actions were removed. Several other actions, filed in other federal courts, were transferred to the Northern District under the multidistrict litigation rules.

With one exception, all parties to the actions in the Northern District of Illinois voluntarily appeared or were present in the District. The exception was Petitioner, Astilleros Espanoles, S.A., the Spanish corporation which designed and built the Amoco Cadiz in Spain. Since Astilleros was not present in the Northern District, but was served with summons in Spain pursuant to the Illinois long arm statute, it challenged *in personam* jurisdiction over it.

Astilleros is a Spanish shipbuilder. Its principal office and each of its five shipyards are located in Spain. All of its directors and officers are citizens of Spain. Astil-

leros maintains no office in Illinois; has no agents or employees there; has never owned or leased any property in Illinois; pays no Illinois taxes; and is not licensed or registered to do business in Illinois.

Astilleros had entered into a contract with Amoco Tankers, a Liberian corporation, to build the Amoco Cadiz. That contract was executed in Illinois, following two weeks of negotiations there in July of 1970. However, no party alleged causes of action against Astilleros arising under the contract. Indeed, Amoco Tankers, the other contracting party, is not even a party to these cases. The only allegations against Astilleros involve negligent design and construction which concededly occurred, if at all, only in Spain.[1] No party alleged that Astilleros had committed a tortious act in Illinois or that any injury occurred there. Instead, each party contended that the property damage suffered by the French plaintiffs when the Amoco Cadiz ran aground off the coast of France in 1978 arose from the negotiation of the contract to build the ship, executed in Illinois eight years earlier.

Although executed in Chicago, that contract bore no relationship to Illinois. It was to become effective only following, *inter alia*, the obtaining by Astilleros of approvals from the Spanish government and the receipt of a written opinion by Spanish counsel retained by

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[1] The complaints of the French against Standard Oil Company (Indiana), Amoco International Oil Company and Amoco Transport allege, *inter alia*, negligent maintenance and operation of the Amoco Cadiz, negligent navigation and manning of the vessel, negligent participation in rescue attempts, and operation of an unseaworthy vessel.

Tankers that the contract was valid and enforceable under the laws and regulations of Spain.

The contract required Astilleros to build, deliver and sell, "at its shipyard at Cadiz, Spain," a 230,000 ton oil carrier for registration under the Liberian flag. Payment for the vessel was to be made in Spain.

The contract was to be governed by and construed in accordance with the laws of England. Disputes arising "under or by virtue of" the contract were to be resolved by arbitration in London under the English Arbitration Act.

The Amoco Cadiz was designed and constructed by Astilleros at its shipyard in Cadiz, Spain. The steering gear system, referred to frequently in the pleadings, was designed and built in Spain, and its components were all manufactured in either Spain or Germany.

The Amoco Cadiz was sold and delivered to Tankers in May, 1974 in Cadiz, Spain, and registered by Tankers with the Republic of Liberia. Thereafter, Astilleros performed no work of any nature in connection with the Amoco Cadiz or her steering gear. Some time after May, 1974, Tankers sold the Amoco Cadiz to Amoco Transport, a Liberian corporation with its principal place of business in Bermuda.

During the 4 years the Amoco Cadiz was under construction, the record reflects only one other visit to Chicago by Astilleros' representatives, a two-day meeting in June of 1972 where "a variety of technical details" for the Amoco Cadiz were discussed. In August of 1975, 15 months after sale and delivery of the Amoco Cadiz, a further meeting took place in Chicago to discuss "gua-

rantee items." No party alleges that the grounding of the Amoco Cadiz in 1978 was related in any way to those meetings, or that they have any relevance to these lawsuits.

The Parties and Proceedings Below

This Petition encompasses three cases filed in U.S. District Court in Chicago and two appeals to the Seventh Circuit.

On September 15, 1978, Amoco Transport Company, Standard Oil Company (Indiana), Amoco International Oil Company, and Claude Phillips filed their complaint (78 C 3693) in admiralty for exoneration from or limitation of liability concerning claims resulting from the grounding of the Amoco Cadiz. On February 16, 1979, the same parties filed a third-party complaint against Astilleros for contribution or indemnification, alleging that Astilleros negligently designed and constructed the Amoco Cadiz. All of these third-party complaints except Amoco Transport's were subsequently dismissed, upon a finding that *only Amoco Transport owned the Amoco Cadiz* and thus had standing to bring the action. No appeal was taken from that order.

In August of 1979, the Republic of France and other French plaintiffs filed a negligence action (79 C 3548) against Standard Oil for damages resulting from the oil spill. Standard in turn filed a third-party complaint against Astilleros for contribution or indemnification, alleging negligence in the design and construction of the Amoco Cadiz.

In September, 1979 the Conseil General des Cotes du Nord, numerous French cities, towns and/or municipali-

ties, and various French union and trade associations, hotel owners, environmental groups, and commercial interests filed suit (79 C 3761) against Standard Oil, Amoco International, Claude Phillips, the American Bureau of Shipping, and Astilleros. The plaintiffs' complaint against Astilleros alleged negligence, breach of warranties, and strict liability in tort. Standard Oil, Amoco International, and Phillips filed a cross-claim and third-party claim against Astilleros for contribution and indemnification, alleging negligence. While the plaintiffs in 79 C 3761 caused summons to be served on Astilleros in Spain, no summons was served on Astilleros in connection with the cross-claim and third-party claim.

Astilleros moved to dismiss all of the claims against it, asserting lack of personal jurisdiction, lack of subject-matter jurisdiction, and *forum non conveniens*. Briefs and affidavits were filed, and on December 26, 1979, the District Court handed down its opinion holding against Astilleros. On April 20, 1982, after Astilleros declined to answer the claims, the District Court entered default judgments on liability against Astilleros as to all claims except those of the French plaintiffs in 79 C 3761. On May 26, 1982, the District Court entered a default judgment on liability against Astilleros and in favor of all the French plaintiffs in 79 C 3761.

Astilleros appealed from those judgments (82-1751 and 82-1943), arguing that it was not subject to *in personam* jurisdiction in Illinois.

The Seventh Circuit, in an opinion by Judge Posner, affirmed. In order to find that French tort claims arose out of Illinois contract negotiations, and that indemnification and contribution claims by strangers to the con-

tract were closely related to it, the Seventh Circuit, *sua sponte* and without any record support, first pierced the corporate veils of Standard, Amoco International, Amoco Transport and Amoco Tankers (which was not even a party to the cases), in order to find that the "real purchaser of the Amoco Cadiz was Standard Oil," an Illinois resident (App. p. 21a). Having created its own contract between Standard and Astilleros, the Court used it as the requisite pre-existing contractual relationship to support quasi-contractual cross-claims for indemnification (App. pp. 22a, 23a). These new claims, said the Court, "arise from" the contract negotiations. Finally, having found that Astilleros was subject to jurisdiction on the cross-claims, the Court held Astilleros subject to jurisdiction as to the complaints of the French plaintiffs[2] because it would be "odd" not to. (App. p. 26a) and because judicial economy would be best served by litigating all claims from the oil spill in one forum (App. p. 27a).

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[2] The Third Circuit has held that using cross claims to justify jurisdiction as to a complaint is improper, *Carty* v. *Beech Aircraft Corp.*, 679 F.2d 1051, 1063 (3rd Cir., 1982).

REASONS FOR GRANTING WRIT

The Seventh Circuit's decision, holding that Astilleros, a nonresident Spanish corporation, was subject to jurisdiction in Illinois on causes of action unrelated to Astilleros' sole contact with Illinois, the execution of a contract with a stranger to the litigation, represents an unconstitutional extension of long arm jurisdiction in violation of the Due Process Clause and contrary to decisions of this Court.

Consideration of this case in conjunction with *Helicopteros Nacionales de Colombia, S.A.* v. *Elizabeth Hall, et al.*, in which the Court has recently granted certiorari, 82-1127, and which raises closely related issues, will permit this Court to address and resolve many of the jurisdictional inconsistencies which have divided both state and federal courts in recent years.

Furthermore, the piercing of corporate veils, *sua sponte*, and the rewriting of the contract, in order to permit Standard Oil to deny its separate identity and "get at" Astilleros (App., p. 22a), is not only in conflict with decisions of several other Circuit Courts of Appeal, and with prior decisions of the Seventh Circuit, but so far departs from the accepted and usual course of judicial proceedings as to require exercise of this Court's supervisory power.

I.

THE SEVENTH CIRCUIT'S DECISION IS IN CONFLICT WITH THIS COURT'S DECISIONS IN *KULKO* v. *CALIFORNIA SUPERIOR COURT*, 436 U.S. 84 (1978) AND *WORLD-WIDE VOLKSWAGEN CORP.* v. *WOODSON*, 444 U.S. 286 (1980) AND IS INCONSISTENT WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN INTERNATIONAL SHOE v. WASHINGTON, 326 U.S. 310 (1945).

The principal issue in this case is whether a foreign corporation can be constitutionally subjected to *in personam* jurisdiction as to tort claims in a forum where neither tortious conduct nor injury occurred, solely because the foreigner executed a contract in the forum with another nonresident which is not a party to the litigation. No decision of this Court, or of any other court, has extended Due Process so far.

In *Kulko* v. *California Superior Court*, 436 U.S. 84 at 93 (1978) this court stated that

> Where two New York domiciliaries, for reasons of convenience, marry in the State of California and thereafter spend their entire married life in New York, the fact of their California marriage by itself cannot support a California court's exercise of jurisdiction over a spouse who remains a New York resident in an action relating to child support.

It can be said with equal force that where Spanish and Liberian domiciliaries, for reasons of convenience,[3] execute a contract in Illinois and thereafter continue

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[3] The District Court found, in a related decision, (App., pp. 30a, 37a), that negotiation of the contract occurred in Illinois "because the Amoco parties *fortuitously* moved its [sic] offices there." (emphasis added)

the contractual relationship entirely in Spain, the fact of the Illinois contract execution cannot, by itself, support an Illinois court's exercise of jurisdiction over a contracting party who remains a Spanish resident in an action relating to tort liability.

World-Wide Volkswagen Corp. v. *Woodson,* 444 U.S. 286 (1980) involved an automobile accident in Oklahoma. Petitioners there had no contacts with Oklahoma, sale of the automobile having occurred in New York. This Court held that jurisdiction could not be predicated on the occurrence of a single event, the accident, in Oklahoma.

In the present case, Astilleros has been found subject to jurisdiction in Illinois predicated on the single event of negotiating and executing a contract there with a stranger to the litigation.

The Seventh Circuit's decision is contrary to *Reich* v. *Signal Oil & Gas Co.,* 409 F. Supp. 846 (S.D. Texas, 1974), aff'd without opinion, 530 F.2d 974 (5th Cir., 1976), where plaintiffs sought to establish Texas jurisdiction over an Italian corporation, Agusta, in a wrongful death action arising out of a helicopter crash in Ghana. Rejecting plaintiffs' jurisdictional argument, the Court stated (409 F. Supp. 852):

> "However, assuming *arguendo* that Agusta's licensing agreement was entered into in Texas, plaintiffs have not alleged a contract cause of action, and this court has found no authority to support the thesis that one who is neither a party nor a third-party beneficiary to a contract may raise the contract for the purpose of establishing jurisdiction over a nonresident defendant."

In *International Shoe Co.* v. *Washington*, 326 U.S. 310, 317 (1945) this Court held that the demands of due process were met "by such contacts of the corporation with the state of the forum as to make it reasonable, in the context of our federal system of government, to require the corporation to defend *the particular suit* which is brought there." (emphasis added). Jurisdiction was permissible when the defendant's activities were not only "continuous and systematic but also give rise to the liabilities sued on . . ." At the same time "the casual presence of the corporate agent or even the conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there."

In the present case, the injuries to French plaintiffs are not the result of contract negotiations in Illinois between Astilleros and Amoco Tankers, a Liberian corporation. If Astilleros was negligent, as alleged, its negligence occurred in Spain where it built the ship. The injuries occurred in France, not in Illinois. Thus the single activity in Illinois is unconnected with the causes of action and does not "give rise to the liabilities sued on," making it unreasonable to require Astilleros to defend these particular suits there.

As this Court has stated more recently, in order to satisfy the requirements of Due Process, there must be a relationship between the defendant, the forum and the litigation, *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977); *Rush* v. *Savchuk*, 444 U.S. 320, 327 (1980). That relationship is absent here. Astilleros' only relationship with Illinois is the execution of a contract here, in 1970, with a Liberian corporation, plus two other brief visits

in the ensuing five years. As this Court stated in *Kulko* v. *California Superior Court*, 436 U.S. 84 at 93:

> "To hold such temporary visits to a State a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment."

Likewise the Illinois forum is unrelated to the litigation. The injuries were all incurred by French plaintiffs, in France. No party asserting claims against Astilleros was a party to the contract. No claims relating to the contract are asserted against Astilleros by anyone. The principal plaintiffs, numerous French citizens and businesses, have no contacts with Illinois and no contacts with Astilleros.

If the relationships are expanded to include not merely the defendant but all parties, as suggested by Justice Brennen in his opinion concurring in part and dissenting in part in *Shaffer* v. *Heitner*, 433 U.S. 186 at 220, the result is the same. None of the claimants have any relationship with Astilleros, and several of the claimants, including the French who initiated the litigation, have no relationship with Illinois.

The constitutionally required nexus between the forum conduct and the cause of action is recognized in the Illinois long arm statute which provides that "only causes of action arising from acts enumerated herein may be asserted against a defendant . . ." Ill. Rev. Stats, Ch. 110, §2-209(c).

The Illinois Supreme Court has recently considered application of the Illinois statute to tortious conduct occurring entirely outside of Illinois involving a defen-

dant with a contractual relationship to an Illinois resident.

In *Green* v. *Advance Ross Electronics Corp.*, 86 Ill. 2d 431 (1981), defendant Green had sold his business to Advance Ross, headquartered in Illinois, and had become president of two Advance Ross subsidiaries and a director of Advance Ross. In 1975, Green's services were terminated and thereafter he allegedly misappropriated corporate assets and converted them to his own use.

It was undisputed that all of Green's allegedly tortious conduct occurred in Texas and the Illinois Supreme Court found that no injury occurred in Illinois. Therefore the Court held that Green was not subject to jurisdiction under the Illinois statute because where "all of the conduct complained of took place outside Illinois, at least the injury must have been suffered in Illinois," 86 Ill.2d at 438. That language is directly applicable to the present case and indicates that the highest court of Illinois has not construed the Illinois long arm statute as broadly as did the Seventh Circuit.

The Seventh Circuit found (App. p. 26a) that the oil spill arose out of the contract activity because "the negotiation and signing of the contract were *critical steps* in the chain of events that led to the oil spill." (emphasis added). To characterize the signing of a contract as a critical step in a chain of events leading to an accident eight years later and thousands of miles away is to replace "arising from" with "but for," and is more appropriately characterized as a "leap" than a "step." No decision of this Court, or of any other, supports such a leap.

The 1970 execution of a contract in Illinois is no more critical to a 1978 oil spill in France than was the 1959

California marriage of the Kulkos critical to a 1976 California suit to modify a New York divorce decree, although it is apparent that but for the marriage there would not have been a divorce, *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978). Nor is it more critical than becoming officers, directors and stockholders in a Delaware corporation, see *Shaffer* v. *Heitner*, 433 U.S. 186 (1977). It is no more critical than selling one's company to an Illinois enterprise and becoming president of a subsidiary of the Illinois enterprise, see *Green* v. *Advance Ross*. But for each of these events the litigation would not have arisen.

In finding a nexus between a 1970 contract and a 1978 tort, the Seventh Circuit overstepped the constitutional boundaries imposed by *International Shoe*, requiring that in-state activities "give rise to the liabilities sued on. . ."

The constitutionally required relationship between cause of action and forum activities was discussed by this Court in *World-Wide Volkswagen*, 444 U.S. at 297:

> the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. (citations omitted). The Due Process Clause . . . gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

Justice Stevens made a similar point, concurring in *Shaffer* v. *Heitner*, 433 U.S. 186 at 218, stating that "fair

notice" includes "fair warning that a particular activity may subject a person to the jurisdiction of a foreign sovereign," and that contacts should give rise to "predictable risks."

The requisite foreseeability and predictability are absent here.

It was not foreseeable or predictable to Astilleros that its contact with Illinois would subject it to suit here, and especially that it would be held to answer these particular suits here. Its contract with Amoco Tankers provided specifically that disputes "arising under or by virtue of" the contract were to be resolved by arbitration in London under the English Arbitration Act. Thus, despite the fact that negotiation and execution of a contract in Illinois might under some circumstances vest the Illinois courts with jurisdiction to resolve disputes about that contract, even where the contract was between a Spaniard and a Liberian, Astilleros (and Tankers) structured their primary conduct to avoid that result, as they were entitled to do.

It was neither foreseeable nor predictable that Astilleros would be held subject to *in personam* jurisdiction in Illinois with regard to tort claims. The Amoco Cadiz was to be built, and was built, entirely in Spain. Thus any negligent conduct by Astilleros could occur only in Spain, not in Illinois. While the grounding of an oil tanker and the consequent escape of its cargo is no doubt foreseeable, that incident not only did not occur in Illinois, but could not have. The Amoco Cadiz has never been in Illinois, and cannot travel the inland waterways to reach Illinois. Because neither negligence nor injury could occur in Illinois, it was not foreseeable in 1970

that Astilleros would be "haled into court" in Illinois to defend tort claims arising out of an oil spill in France.

It was not foreseeable to Astilleros when it negotiated a shipbuilding contract in Illinois, with a Liberian corporation in 1970, that the 7th Circuit would overturn or ignore long established principles of corporate law to pierce the corporate veils of Standard Oil Company, Amoco International Oil Company, Amoco Transport and Amoco Tankers, which was not even a party, and hold that Astilleros contracted with Standard Oil. It was particularly not foreseeable that a court would permit a party to affirmatively pierce its own veil to "get at" a foreign defendant, ignoring in the process the unchallenged finding of the District Court that Amoco Transport, not Standard Oil, owned the Amoco Cadiz.

It was not foreseeable or predictable that the 1970 execution of a contract in Chicago would permit injured French plaintiffs to maintain tort claims against Astilleros in Illinois arising out of a 1978 accident off the coast of France. Because it was not foreseeable; because it was not a "predictable risk"; because Astilleros' isolated contacts with Illinois did not give rise to the claims asserted in Illinois, it is unconstitutional to subject Astilleros to jurisdiction in Illinois on those claims.

II.

THE DECISIONS OF THE LOWER COURTS IMPOSE A NEW MECHANICAL TEST OF JURISDICTION, EXECUTION OF A CONTRACT, CONTRARY TO THE DECISIONS OF THIS COURT IN *SHAFFER* v. *HEITNER*, 433 U.S. 186 (1977), *WORLD-WIDE VOLKSWAGEN CORPORATION* v. *WOODSON*, *KULKO* v. *CALIFORNIA SUPERIOR COURT*, CONTRARY TO THE DECISIONS OF OTHER COURTS OF APPEAL, AND CONTRARY TO DECISIONS OF THE HIGHEST STATE COURTS.

Astilleros' only contacts with Illinois were the negotiation and execution of a contract here, and two other brief visits during a five year period. Neither of these later visits are shown to be relevant to this litigation. Based on those contacts, it has been held subject to *in personam* jurisdiction on tort, indemnity and contribution claims arising out of an oil spill in France. To permit that result is to approve a new mechanical test of jurisdiction, namely that a corporation is subject to jurisdiction in the forum where it executes a contract, to answer tort claims asserted by strangers to the contract who are injured anywhere in the world as a result of contact with the subject matter of the contract. No other court has approved such a sweeping application of *in personam* jurisdiction in tort cases.

Only six years ago, this court rejected a mechanical test of jurisdiction in *Shaffer* v. *Heitner*, 433 U.S. 186 (1977), holding that the presence of property in the forum state was not sufficient, standing alone, to subject the nonresident owner's interest in that property to jurisdiction in the forum. While recognizing that allowing *in rem* and *quasi in rem* jurisdiction based solely on the location of property in the forum had the virtue of cer-

tainty and attendant simplicity, the court found the cost "too high" (p. 211) and instead mandated application of the minimum contacts standard of *International Shoe.*

More recently, this court declined to adopt a mechanical, albeit simple, rule that "every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel," *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. at 296, stating:

> "Having interred the mechanical rule [in Shaffer] that a creditor's amenability to a *quasi in rem* action travels with his debtor, we are unwilling to endorse an analogous principle in the present case."

As this Court stated in *Kulko* v. *California Superior Court,* 436 U.S. 84 at 92: "the 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application. . . ."

The Seventh Circuit itself, in *Lakeside Bridge & Steel Co.* v. *Mountain State Construction Co.,* 597 F.2d 596, 604 (1979) rejected "formalities of contract execution" as the determinative test of *in personam* jurisdiction.

In *Shaffer* v. *Heitner,* 433 U.S. at 209, this Court stated that jurisdiction was no longer permissible where "the only role played by the property is to provide the basis for bringing the defendant into court." Jurisdiction should be equally impermissible where, as here, the only role played by the contract is to bring Astilleros into court. Once the contract has achieved that purpose, it becomes irrelevant to the causes of action asserted against Astilleros, and thus should be irrelevant for jurisdictional purposes as well, see Brilmayer, *How Contacts*

Court: Due Process Limitations on State Court Jurisdiction, 1980 Sup. Ct. Rev. 77.

This Court should neither accept nor endorse a mechanical rule that execution of a contract gives rise to *in personam* jurisdiction for unrelated causes of action brought by strangers to the contract.[4]

III.

THE SEVENTH CIRCUIT'S DECISION, PIERCING THE CORPORATE VEILS OF STANDARD OIL COMPANY, AMOCO INTERNATIONAL OIL COMPANY AND OTHERS, *SUA SPONTE*, OVERTURNS LONG ESTABLISHED PRINCIPLES OF CORPORATE LAW, IS INCONSISTENT WITH OTHER SEVENTH CIRCUIT OPINIONS, AND IS CONTRARY TO THE DECISIONS OF AT LEAST SIX OTHER CIRCUIT COURTS OF APPEAL.

In order to find that Astilleros was subject to jurisdiction in Illinois, Judge Posner found (App., pp. 21a, 22a), that while the "normal purchaser" of the Amoco Cadiz was a Liberian corporation, there did not appear to be any "real Liberians" in the picture; that Liberian registry was "no doubt" obtained in order to avoid liabil-

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[4] Numerous decisions of Courts of Appeal, and of the highest state courts, reject mechanical tests of *in personam* jurisdiction, including *Gray* v. *American Radiator & Sanitary Corp.*, 22 Ill. 2d 432, 440 (1961); *Braband* v. *Beech Aircraft Corp.*, 72 Ill. 2d 548, 554 (1978); *Honeywell, Inc.* v. *Metz Apparatewerke*, 509 F.2d 1137, 1144 (7th Cir., 1975); *Seymour* v. *Parke, Davis & Company* 423 F.2d 584, 586 (1st Cir., 1970); *Mississippi Interstate Exp., Inc.* v. *Transpo, Inc.*, 681 F.2d 1003, 1006 (5th Cir. 1982); *In-Flight Devices Corporation* v. *Van Dusen Air, Inc.*, 466 F.2d 220, 225 (6th Cir., 1972); *Insurance Co. of North America* v. *Marina Salina Cruz*, 649 F.2d 1266, 1270 (9th Cir., 1981); *Buckeye Boiler Co.* v. *Superior Court*, 71 C.2d 893; 458 P. 2d 57 (1969).

ity rather than to conduct business; that the "real purchaser of the Amoco Cadiz was Standard Oil Company"; and that Standard had created a Liberian shell in an effort to keep some of its assets from potential creditors. He went on to state that the effort to shield assets "apparently failed [because] Standard Oil is a defendant in this litigation" and then stated: "If the [French] plaintiffs can pierce Standard Oil's corporate veil to get at it directly, we cannot see why Standard Oil should not be able to pierce its own veil and get at Astilleros." The Court cites no authority for this novel interpretation of corporate law, and no record support for its factual findings. If allowed to stand, however, the decision will at the very least foster a multitude of claims by plaintiffs seeking to pierce corporate veils, claims which prior to the Seventh Circuit's decision would have been deemed spurious. These claims will necessarily require the expediture of substantial judicial time to distinguish, on whatever grounds, the Court's opinion, since the alternative heralds the demise of separate corporate identities.

Such a dramatic change in corporate law is undesirable. It is particularly undesirable when no pleadings by any party, including claimants, alleged that any corporate veils should be pierced; when the record contains no facts upon which to predicate such findings;[5] when no party argued, either in the District Court or in the Seventh Circuit, that any corporate veils should be pierced; and when Judge McGarr had already found, in dismissing Standard Oil from Case No. 78 C 3693, that Standard was *not* the owner of the Amoco Cadiz.

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[5] See Justice Brennan's opinion concurring in part and dissenting in part in *Shaffer* v. *Heitner*, 433 U.S. 186, 221 (1977).

Corporate entities have, in appropriate circumstances, been disregarded through application of the "mere instrumentality" or "alter ego" rule. Application of this rule has required total control, exercised at the time the acts complained of took place and proximately causing injury or unjust loss, *1 Fletcher Cyclopedia Corporations* §43 p. 209.

A slightly modified version of these tests was adopted and approved by the Second Circuit in *Fisser* v. *International Bank,* 282 F.2d 231, 238 (2d Cir., 1960) where the court held that in order to pierce a corporate veil a claimant must prove three elements, (1) complete domination (2) so as to commit a fraud or perpetrate the violation of a positive legal duty or a dishonest or unjust act (3) which proximately caused injury or unjust loss.

The Second Circuit's decision in *Fisser* was adopted and followed by the Seventh Circuit itself in *Steven* v. *Roscoe Turner Aeronautical Corp.,* 324 F.2d 157, 161 (7th Cir., 1963) where the court enumerated 11 factors generally considered by courts in determining whether the mere instrumentality rule should be applied. None of those factors were present here.[6]

Furthermore, the Seventh Circuit in *Hazeltine Research, Inc.* v. *Zenith Radio Corp.,* 388 F.2d 25, 30 (7th Cir., 1967) held that "the resolution of the alter ego issue can be made only after an adversary determina-

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[6] Until its decision on these appeals, the Seventh Circuit had adhered to the *Stevens* guidelines, *see Allegheny Airlines, Inc.* v. *United States,* 504 F.2d 104 (7th Cir., 1974); *Bernardin, Inc.* v. *Midland Oil Corp.,* 520 F.2d 771 (7th Cir., 1975), *C. M. Corp.* v. *Oberer Development Co.,* 631 F.2d 536 (7th Cir., 1980).

tion of the facts involved. This court cannot make an initial determination of these facts, and the District Court did not do so."

None of the factors which have been required by other United States Courts of Appeal in resolving alter ego cases were present in this case, nor did the Seventh Circuit find that they were.[7] Indeed, the only "fact" found was that Standard Oil was a defendant in this litigation. From that fact, the Court concluded that the plaintiffs had pierced Standard Oil's corporate veil. However, as numerous unsuccessful plaintiffs can attest, there is a major difference between naming a corporation a defendant in a lawsuit on an alter ego theory, and successfully piercing the corporate veil to obtain recovery.

Even where courts have pierced corporate veils, they have uniformly done so to corporate defendants, in order to permit a just recovery for an injured plaintiff. In no prior instance has a court sanctioned the affirmative piercing of a corporate veil by a plaintiff corporation to permit shifting of liability to a defendant. 18 Am. Jur. 2d, *Corporations*, §§79, 80, pp. 619-621. "Defendants have uniformly been denied the opportunity to pierce their

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[7] See the following cases: *Bendix Home Systems, Inc.* v. *Hurston Enterprises*, 566 F.2d 1039, 1041 (5th Cir., 1978); *Bucyrus-Erie Co.* v. *General Products*, 643 F.2d 413, 418 (6th Cir., 1981); *Seymour* v. *Hull & Moreland Engineering*, 605 F.2d 1105, 1111 (9th Cir., 1979); *Trent* v. *Atlantic City Electric Co.*, 334 F.2d 847, 864 (3rd Cir., 1964); *Martin* v. *Pilot Industries*, 632 F.2d 271, 276 (4th Cir., 1980); *Edgar* v. *Fred Jones Lincoln-Mercury, Etc.*, 524 F.2d 162, 166 (10th Cir., 1975); *Luckett* v. *Bethlehem Steel Corp.*, 618 F.2d 1373, 1378 (10th Cir., 1980).

own corporate veils in order to avoid liability," *McDaniel v. Johns-Manville Sales Corp.*, 487 F. Supp. 714 (N.D. Ill., 1978). The Seventh Circuit, without any factual record, and without benefit of briefs or argument on the issue, has rewritten a substantial segment of American corporate law in order to "get at" a Spanish defendant. In so doing it has cast doubt on long recognized and firmly established principles governing corporate identity.

This Court should grant the Petition for a Writ of Certiorari, not only to resolve the present conflict between the Seventh Circuit and at least six other Circuit Courts of Appeal regarding the piercing of corporate veils, but also in the exercise of this Court's supervisory power to deal with departures from the accepted and usual course of judicial proceedings.

IV.

THE PERCEIVED BENEFITS OF JUDICIAL ECONOMY DO NOT JUSTIFY THE WITHDRAWAL OF DUE PROCESS AND EQUAL PROTECTION FROM AN ALIEN CORPORATION.

The Seventh Circuit did not expressly state that Astilleros was not entitled to Equal Protection under the law or that Due Process principles afforded less protection to Spanish corporations than to Americans.

Yet no prior case has upheld long arm jurisdiction over an American defendant based on facts such as are present here. No prior case has held that plaintiffs injured outside the forum can, in the absence of negligence in the forum, obtain *in personam* jurisdiction over a nonresident because the nonresident executed a contract in the forum with a stranger to the lawsuit.

No prior case has imposed jurisdiction by piercing the corporate veil of a claimant (much less the veils of three claimants) so as to "get at" an American defendant.

No prior case has substituted a new party to a lengthy printed contract between corporations and then replaced the contractual allocation of risks with a new quasi-contractual right to indemnification to the substituted party, all as a means to create jurisdiction over an American defendant.

In only one prior case has a court used cross-claims to impose jurisdiction as to a complaint, and that procedure was sternly criticized by the Third Circuit when it reversed that decision, *Carty* v. *Beech Aircraft*, 679 F.2d 1051, (3rd Cir., 1982).

No prior case has upheld *in personam* jurisdiction because it would be "odd" not to.

That the Seventh Circuit took these unprecedented actions *sua sponte*, without record support, only strengthens the inference that the Court withdrew Equal Protection and was affording Astilleros less Due Process protection than it would have afforded an American defendant.

The use of "judicial economy" to justify that result, contrary to the clear pronouncement of both this Court and the Illinois Supreme Court,[8] gives further support

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[8] "Even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment," *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980); "But, no matter how much

to the inference that, in the Seventh Circuit's view, foreigners need not be afforded the same Due Process protections and given the Equal Protection provided to American defendants.

This Court should grant this Petition and reverse the Seventh Circuit in order to dispel any such inference and to reaffirm that Due Process standards and Equal Protection of the law apply with equal force to citizens and to foreign visitors alike.

CONCLUSION

As Justice White stated in dissenting from the denial of the Petition for Certiorari in *Lakeside Bridge & Steel Co.* v. *Mountain State Construction Co., Inc.*, 445 U.S. 907 (1980), federal and state courts have been deeply divided in cases involving personal jurisdiction over nonresidents. The divisions remain, as noted in dissents from denial of Petitions in *Baxter, et al.* v. *Mouzavires*, 455 U.S. 1006 (1982) and *Chelsea House Publishers, et al.* v. *Nicholstone Book Bindery, Inc.*, 455 U.S. 994 (1982).

Yet plaintiffs seeking to obtain *in personam* jurisdiction over nonresidents are generally limited either to establishing that the defendant was "doing business" in

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[8] (Continued)

more convenient and economical it may be to adjudicate defendants counterclaim against him and their similar claim against his father in the same action in Illinois, Green, Sr., cannot be brought under the authority of Illinois courts unless that result is warranted under section 17 (1)(b)." *Green* v. *Advance Ross Electronics Corp.*, 86 Ill. 2d 431, 440 (1981).

the forum and is thus subject to jurisdiction as to concededly nonrelated causes of action, or that the forum activities "give rise" to the cause of action.

This Court has recently granted certiorari in *Helicopteros Nacionales de Colombia, S.A.* v. *Elizabeth Hall, et al.*, 82-1127, which raises the issue of whether the in-state activities of a nonresident constituted "doing business" so as to subject the nonresident to jurisdiction on concededly unrelated tort causes of action.

Astilleros' Petition raises the issue of whether tort causes of action "arise from" non-tortious activity within the forum state since Astilleros was concededly not "doing business" in Illinois.

Granting the Petition in this case, so that it can be considered with the *Helicopteros* case, will permit this Court to examine both approaches to jurisdiction over nonresidents and to resolve many of the conflicts noted by Justice White.

Furthermore, granting this Petition will permit this Court to address the issue of corporate alter egos raised by the Seventh Circuit before the decision breeds a host of attacks on corporate identities.

For the reasons stated above Petitioner urges that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Dated: June 9, 1983

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MDL Docket No. 376

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE COAST OF FRANCE ON MARCH 16, 1978

No. 78 C 3693

In the Matter of the Complaint Of

AMOCO TRANSPORT COMPANY, STANDARD OIL COMPANY (INDIANA), AMOCO INTERNATIONAL OIL COMPANY, and CLAUDE PHILLIPS

for Exoneration from or Limitation of Liability

MEMORANDUM OPINION AND ORDER

In each of several of the cases consolidated in this multidistrict proceeding, Astilleros Espanoles, S.A. ("Astilleros") has filed a motion to dismiss. Issues relative to the motions have been briefed by counsel in the context of the case first filed in this court, the limitation proceeding on behalf of Amoco Transport Company ("Transport"). This decision, therefore, relates only to the limitation action, though its reasoning may have broader application.

In that proceeding, the limitation plaintiff filed a third-party complaint against Astilleros, based upon the allegedly negligent manufacture of the M/V Amoco Cadiz, whose grounding and subsequent loss of cargo allegedly caused the damage upon which the parties base their claims.

In the motion to dismiss, Astilleros raises several arguments: 1) the court lacks personal jurisdiction over Astilleros; 2) the court lacks subject matter jurisdiction over the third-party complaint; and 3) the third-party complaint should be dismissed on the theory of *forum non conveniens*. The court will address these arguments *seriatim*.

I.

Because of the nature of several of the arguments raised, a brief recitation of certain pertinent facts would be helpful. Astilleros is a Spanish corporation in the business of ship construction and repair. Its principal corporate office and its five shipyards are located in Spain.

In 1970, Astilleros and Amoco Tankers Company conducted negotiations for the manufacture by the former and purchase by the latter of the Amoco Cadiz. These negotiations took place in Chicago and in Spain. In July, 1979, four representatives of Astilleros came to Chicago to meet with representatives of Amoco. A subject of the negotiations concerned "the technical plans and specifications for the ship." (Memorandum in Opposition, Wren Affidavit, ¶4.) On the other hand, Astilleros maintains that "[n]o part of the design, manufacture, or installation of her steering gear took place in Illinois." (Martinez Affidavit filed July 23, 1979, ¶7.) Rather, the steering gear system was designed and manufactured in Spain and Germany. (Martinez Affidavit ¶8.) The contract for the construction of ship was executed in Chicago on July 31, 1970.

Subsequent to the execution of the contract, several representatives of Astilleros met with representatives of Amoco International Oil Company on at least two occasions in Chicago to discuss a variety of technical details for the Amoco Cadiz. (Wren Affidavit ¶¶ 5,6.)

In May, 1974, Astilleros delivered the Amoco Cadiz to Amoco Tankers Company, which ultimately sold the tanker to Transport.

II.

Astilleros maintains that this court lacks personal jurisdiction over it. Rule 4(e), Fed.R.Civ.P., provides that service of summons on one not an inhabitant of or found within the state in which the federal district court sits may be made under the circumstances provided in and in the manner prescribed by a statute or rule of that state. In Illinois, the applicable statute is the statute popularly referred to as the "long-arm" statute, Ill.Rev. Stat. Ch. 110, §§16, 17 (1977).

Section 17 provides in pertinent part:

> (1) Any person, whether or not a citizen of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any such acts:
>
> (a) The transaction of any business within this State;
>
> (b) The commission of a tortious act within this State;
>
> (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

The intent of this statute is to assert jurisdiction over nonresidents to the fullest permissible extent under the due process clause. *Nelson* v. *Miller,* 11 Ill.2d 378, 143 N.E.2d 673 (1957); *Poindexter* v. *Willis,* 87 Ill.App.2d 213, 231 N.E. 2d 1 (5th Dist. 1967); *Hutter Northern Trust* v. *Door County Chamber of Commerce,* 403 F.2d 481 (7th Cir. 1968). The due process clause requires as a condition precedent to the exercise of jurisdiction over the person of a nonresident that the person have such "minimum contacts" with the forum state that "main-

tenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 (1945), *quoting Milliken* v. *Meyer,* 311 U.S. 457, 463 (1940); *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 (1957); *Hanson* v. *Denckla,* 357 U.S. 235 (1958).

Whether there exist such minimum contacts so as to comport with the due process clause cannot be determined by a set formula or "rule of thumb," but must be determined from the particular facts of each case. *Gray* v. *American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E. 2d 761 (1961); *Braband* v. *Beech Aircraft Corp.,* 72 Ill.2d 548, 382 N.E. 2d 252 (1978). The test is a flexible one which emphasizes the reasonableness of subjecting a defendant to suit in a foreign jurisdiction. *Shaffer* v. *Heitner,* 433 U.S. 186, 203-04 (1977); *First National Bank of Chicago* v. *Screen Gems, Inc.,* 40 Ill. App. 3d 427, 352 N.E. 2d 285 (1st Dist. 1976); *Sears Bank and Trust Co.* v. *Luckman,* 61 Ill.App. 3d 260, 377 N.E. 2d 1156 (1st Dist. 1978). There must be some conduct by virtue of which the defendant may be said to be transacting business within the forum state, thereby invoking the benefits and protection of its laws. *Hanson* v. *Denckla, supra,* at 253. Thus, it is the nature and quality of the defendant's conduct which must be examined in determining whether *in personam* jurisdiction exists. *International Shoe Co.* v. *Washington, supra* at 319; *Honeywell, Inc.* v. *Metz Apparatewerks,* 509 F.2d 1137 (7th Cir. 1975).

As a further limitation on the exercise of "long-arm" jurisdiction, subsection (3) of §17 provides that only causes of action which arise from the jurisdictional conduct may be asserted against the defendant. The purpose of this provision is to ensure that a close relationship exists between the jurisdictional activity and the cause of action which the defendant must defend. Ill.Ann.Stat. Ch. 110 §17 (Smith-Hurd), Historical and Practice Notes. This requirement has been interpreted

as mandating only that the plaintiff's cause of action "be one which lies in the wake of the commercial activities by which the defendants submitted to the jurisdiction of Illinois courts." *Koplin* v. *Thomas, Haab & Botts*, 73 Ill.App.2d 242, 219 N.E. 2d 646, 651 (1st Dist. 1966).

The parties disagree as to whether this court can find that the transaction of business in this state was the jurisdictional act by Astilleros. Astilleros contends that because Transport's claim sounds in tort, this court's inquiry must be limited to whether a tortious act was committed in Illinois. This contention is based upon its belief that "[t]he business allegedly transacted by Astilleros [in Illinois], the partial negotiation and execution of a contract, does not establish the relationship with Illinois necessary to sustain a cause of action based on tort." (Reply Memorandum of Astilleros at p. 5.)

The statute itself belies this narrow interpretation. Subsection (1) of §17 states that a person submits himself "to the jurisdiction of the courts of this State as to *any* cause of action arising from the doing of any" jurisdictional act. Ill. Rev. Stat. Ch. 110, §17(1) (1977) (emphasis added). Subsection (3) permits causes of action arising from the jurisdictional acts to be asserted against the defendant. The statute does not foreclose suit in tort upon acts which constitute the transaction of business. The tort must simply "lie in the wake of such commercial activity."

Case law fully supports this proposition. *See People ex rel. Scott* v. *Police Hall of Fame*, 60 Ill.App. 3d 331, 376 N.E. 2d 665 (1st Dist. 1978) (where the case was based on the tort of common law fraud, yet the jurisdictional act was the transaction of business); *Technical Publishing Co.* v. *Technology Publishing Corp.*, 339 F.Supp. 225 (N.D. Ill. 1972) (where the case was based on the tort of unfair competition but the court's analysis focused primarily upon the defendant's transaction of

business in this state, although the court also found the commission of a tortious act in this state); *Continental Nut Co.* v. *Robert L. Berner Co.*, 345 F.2d 395 (7th Cir. 1965) (where plaintiff sued in tort but the court analyzed the jurisdictional question in terms of both the transaction of business *and* the commission of a tortious act); *Insull* v. *New York World-Telegram Corp.*, 172 F.Supp. 615 (N.D. Ill. 1959) (where the case was for defamation but the court found both the transaction of business and the commission of a tortious act); *Dalton* v. *Blanford*, 67 Ill.App. 3d 91, 383 N.E. 2d 806 (5th Dist. 1978) (where the complaint alleged a product liability claim and the court asserted *in personam* jurisdiction based upon the transaction of business).

In *Lindley* v. *St. Louis-San Francisco Railway Co.*, 407 F.2d 639 (7th Cir. 1968), a tort action, the court stated: "Under . . . [*International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945) and *Hanson* v. *Denckla*, 357 U.S. 235 (1958)], and Sec. 16 and Sec. 17 of the Illinois Civil Practice Act, a solitary business transaction or tort justifies *in personam* jurisdiction *if the action arises from either.*" 407 F.2d at 641 (emphasis in original).

Thus, if this court finds that the negotiations which took place in Chicago concerning the technical specifications, manufacture and operation of the Amoco Cadiz constitute the "transaction of any business" and that the tort sued upon (negligent design, manufacture and construction of the ship or its steering system) lies in the wake of the commercial activity occurring in this state, then Astilleros has submitted to the jurisdiction of the court which, therefore, can assert *in personam* jurisdiction over it, if such assertion would not offend traditional notions of fair play and substantial justice.

The court concludes that it does have jurisdiction over the person of Astilleros.

The third-party complaint states a cause of action for indemnification and contribution pursuant to Rule 14(a),

Fed.R.Civ.P., and a cause of action pursuant to Rule 14(c), Fed.R.Civ.P., which would cause third-party defendant to be primarily liable to claimants suing Transport. The cause of action sounds in tort for alleged negligence in the design and manufacture of the steering and other vital systems of the Amoco Cadiz.

As shown in Part I of this memorandum, numerous discussions were held in Chicago concerning plans, specifications and technical aspects of the Amoco Cadiz. (As the statute reads and case law holds, only those negotiations which dealt with the Amoco Cadiz, and not its sister ships, are relevant in the determination of the existence of minimum contacts.) Moreover, Astilleros's attempt to direct or to limit this court's analysis to the design and manufacture of the steering gear alone must fail. The third-party complaint alleges negligence in the design and manufacture of other vital systems in addition to the steering mechanism. In addition, the court has been unable to find and Astilleros has not directed the court's attention to authority for the proposition that in a products liability case, when determining the existence of minimum contacts, the origin of component parts of the products must be examined, and only those component parts designed, manufactured or the subject of negotiation within the state may be subject of the tort claim.

By voluntarily conducting negotiations in Illinois concerning the design and manufacture of the Amoco Cadiz, Astilleros conducted activities within the state, thereby invoking the benefits and protection of its laws. The nature and quality of its acts constitute the transaction of business out of which Transport's cause of action arose. The claim of alleged negligent design and manufacture of the tanker "lie in the wake" of the negotiations which took place in Chicago.

The mere fact that the negotiations dealt with matters ultimately framed into a contract does not insulate

Astilleros from a tort claim relating to the product which was the subject of the contract. The type of activity conducted in Chicago satisfies the jurisdictional predicate of the transaction of business within this state such that the assertion of personal jurisdiction over Astilleros does not offend traditional notions of fair play and substantial justice.

III.

Astilleros next argues that this court lacks subject matter jurisdiction in admiralty over the third-party complaint. It contends that the tort of negligent design and manufacture of the tanker is not sufficiently related to traditional maritime activity so as to be within the court's admiralty jurisdiction. This argument relies primarily on several recent decisions in which courts have seemingly delimited admiralty jurisdiction over certain tort claims. Astilleros states that, "[i]n *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.E.2d 454 (1972), the Supreme Court completely changed the basis for determining admiralty jurisdiction in tort cases." (Memorandum in Support at p. 6.) This contention misstates the reasoning and holding of the Court. After reviewing prior decisions, the Court stated the general rule that if the tort occurred on navigable water, admiralty jurisdiction existed. This "locality test" worked satisfactorily for most traditional maritime torts involving a waterborne vessel; a simple test applied in simple cases. The court recognized, however, "that this Court has never explicitly held that a maritime locality is the sole test of admiralty jurisdiction." 409 U.S. at 258. Moreover,

> . . . there has existed over the years a judicial, legislative, and scholarly recognition that, in determining whether there is admiralty jurisdiction over a particular tort or class of torts, reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant

> with the purposes of maritime law than is a purely mechanical application of the locality test.
> 409 U.S. at 261.

In addition, the very narrow scope of the Court's holding refutes its interpretation as "completely chang-[ing] the basis for determining admiralty jurisdiction in tort cases." (Memorandum in Support at p. 16.) "We hold that unless . . . [a significant relationship to traditional maritime activity] exists, claims *arising from airplane accidents* are not cognizable in admiralty in the absence of legislation to the contrary." 409 U.S. at 268 (emphasis added).

In *Executive Jet*, a jet aircraft struck a flock of seagulls upon take-off, lost power, crashed and sank in navigable waters of Lake Erie. The issue before the Court was whether a suit based on negligence for property damage to the aircraft lay within federal admiralty jurisdiction. In addressing the jurisdictional issue, the Court stated:

> The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels religated [sic] to ply the waterways of the world, beyond whose shores they cannot go. That law deals with navigational rules—rules that govern the manner and direction those vessels may rightly move upon the waters.
> 409 U.S. at 269-70.

Thus, through experience, courts sitting in admiralty are well equipped to hear matters such as "maritime liens, the general average, captures and prizes, limitations of liability, cargo damage, and claims for salvage." 409 U.S. at 270. However, "[r]ules and concepts such as these are wholly alien to air commerce, whose vehicles operate in a totally different element, unhindered by geographical boundaries and exempt from the navigational rules of the maritime road." 409 U.S. at 270.

It is in this context that the court emphasized its previously-expressed requirement that there exist a significant relationship to traditional maritime activity to trigger the federal court's peculiar expertise in admiralty cases.

As the quoted holding of the Executive Jet case demonstrates, its impact on the law of admiralty is limited to aviation cases. As opposed to the *Executive Jet* situation, the fact that the tragedy of the Amoco Cadiz occurred in navigable water is not inconsequential. Had this not been so, perhaps the argument based on *Executive Jet* would be more persuasive.

Another application of the requirement that the tort bear a significant relationship to traditional maritime activity is found in *Chapman* v. *United States*, 575 F.2d 147 (7th Cir. 1978) (*en banc*).

> [The issue was] whether the federal admiralty jurisdiction extends to tort claims involving the operation of small pleasure boats over waters that, although navigable and used for commercial transportation in the past, are now used and likely to be used only for recreational activities. We hold that admiralty jurisdiction does not exist under these circumstances.
>
> 575 F.2d at 147.

The court correctly stated that the holding in *Executive Jet* was confined to aviation torts but commented that its reasoning was instructive. Thus, the court did not adopt a mechanical application of the locality test but instead analyzed the jurisdictional problem in terms of the claim's relationship to traditional maritime activity. The court concluded that a pleasure boat accident which occurred in waters used exclusively for recreational activities bore no significant relationship to maritime activity, that is, to navigation and commerce. 575 F.2d at 151.

In the instant case, the accident occurred at sea in heavily-travelled international shipping lanes, undeniably involving commercial maritime activity in navigable waters.

Other cases cited by Astilleros are similarly inapposite. *E.g., Jorsch* v. *LeBeau*, 449 F.Supp. 485 485 (N.D. Ill. 1978) (involving an injury to a water skier); *McGuire* v. *City of New York*, 192 F.Supp. 866 (S.D. N.Y. 1961) (involving an injury to a bather at a public beach).

The finding, in this case, of events which bear a significant relationship to traditional maritime activity is not defeated by the fact that admiralty jurisdiction does not extend to shipbuilding contracts. The third-party complaint does not state a contract claim. It is for negligent design and manufacture, which negligence allegedly was the proximate cause of the maritime accident. Courts have long held that suits for the negligent design, manufacture or assembly of a vessel involved in a maritime accident are cognizable in admiralty. *E.g., McKee* v. *Brunswick Corp.*, 354 F.2d 577 (7th Cir., 1965) (which also involved long-arm jurisdictional issues); *Watz* v. *Zapata off Shore Co.*, 431 F.2d 100 (5th Cir. 1970); *Jig The Third Corp.*, v. *Puritan Marine Insurance Underwriters Corp.*, 519 F.2d 171 (5th Cir. 1975); *Schaeffer* v. *Michigan-Ohio Navigation Co.*, 416 F.2d 217 (6th Cir. 1969); *Taisho Fire & Marine* v. *Vessel Montana*, 335 F.Supp. 1238 (N.D. Cal. 1971).

The cases which Astilleros cites simply do not support its position. *Hollister* v. *Luke Construction Co.*, 517 F.2d 920 (5th Cir. 1975) (which did not involve a vessel in navigation); *Alfred* v. *M/V Margaret Lykes*, 398 F.2d 684 (5th Cir. 1968) (which involved a vessel which was neither completed nor commissioned); *Frankel* v. *Bethlehem-Fairfield Shipyard*, 132 F.2d 634 (4th Cir. 1942) (which involved a vessel not completed). Thus, cases which hold that a suit based on a shipbuilding *contract* is not a suit in admiralty shed no light on the

issue of whether this court has jurisdiction in admiralty over the *tort* claims of Transport.

Therefore, this court finds that the claim for negligent design and manufacture of the Amoco Cadiz, which was involved in a maritime accident while engaged in commerce, is sufficiently related to traditional maritime activity so as to be within the purview of federal admiralty jurisdiction.

IV.

Finally, Astilleros requests that this court exercise its discretion to dismiss the third-party complaint on the theory of *forum non conveniens.*

The leading federal decision on *forum non conveniens* is *Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501 (1947). "The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." 330 U.S. at 507. Many factors to be analyzed were enumerated by the Court.

> If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to enforcibility [sic] of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by

> inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. [footnote omitted.] But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. 330 U.S. at 508.

Dismissal on the basis of this principle requires that there in fact be a significantly more convenient alternative forum in which the lawsuit may be maintained. Such alternative forum must be able to assert jurisdiction over all parties and to award complete relief. *Swift & Co. Packers* v. *Compania Columbiana Del Caribe, S.A.*, 339 U.S. 684 (1950); *see* 15 C. Wright, A. Miller and E. Cooper, Federal Practice and Procedure, §3828 (1976 ed.). Finally, the burden on the defendant moving to dismiss in favor of a court of a foreign country is very strong, although somewhat diminished in this case, where plaintiff is a foreign corporation. The alien status of Transport, however, seems balanced by the fact that its limitation action is not in actuality the affirmative assertion of a cause of action against others but a defensive action in response to several actions filed against it in the courts of this country.

It is against this background and within this framework that Astilleros must show that dismissal is both proper and just.

Astilleros, focusing solely on inconveniences which it may face and emphasizing its own private interest, would have this court ignore the private interest of Transport. As stated above, Transport did not voluntarily seek to litigate the issues raised by the grounding of the Amoco Cadiz. Rather, it is in this country seeking to limit its liability to foreign claimants who themselves, for reasons strategic or otherwise, chose to litigate in the United States issues whose resolution might have been sought somewhere in Europe. Suffice it to say that this statutorily-authorized limitation proceeding could not have been brought in a foreign jurisdiction. The private in-

terest of Transport, a foreign corporation, demands that the limitation action proceed and that all issues relevant thereto be litigated in one forum.

Another relevant consideration is the relative ease of access to the sources of proof. The sources of proof will be found in Chicago (the substance of negotiations conducted there), Spain (where the tanker was manufactured), Germany (where the steering mechanism was subcontracted), and France (where the accident and damage occurred and the wrecked vessel is stored). It appears, therefore, that there exists no single jurisdiction which would afford such increased relative access to the sources of proof that this factor be deemed determinative.

As to the availability of compulsory process, it appears that given the multinational nature of the issues and parties in interest, no single country could afford compulsory process as to all parties. Focusing on the third-party complaint, Astilleros has not shown that it could obtain compulsory process over the German subcontractor or any other foreign party it may wish to call as witness or to bring in as a party.

The cost of obtaining attendance of willing witnesses in this country would, of course, be somewhat greater than in any European nation.

The possibility of viewing the premises is available only in France, not Spain. However, this factor bears little weight with respect to considerations dealing with the third-party complaint.

It is arguable that litigation of the issues presented by the oil spill presents numerous practical administrative problems which make trial of the cases difficult, inexpeditious and expensive. However, given the fact that the motion to dismiss is addressed only to the third-party complaint in Transport's limitation action, these factors are not as persuasive as they might have been if

addressed to all consolidated cases. It is a fact, however, that even dealing with the third-party complaint exclusively, numerous practical inconveniences exist. However, weighing the inconvenience of retaining jurisdiction against dismissal of only the third-party complaint, the scales tip in favor of retention.

The factor of enforceability of any judgment ultimately rendered bears little weight given the numerous parties and nations involved.

It does not appear that Transport has brought its third-party complaint against Astilleros to "vex, harass or oppress" it. Rather, Transport attempts to consolidate in one forum all of the issues which are relevant to the just and total resolution of its right to limitation and the extent of its liability. Again, Transport is not litigating in the courts of this country voluntarily but brings this limitation action as a defense to suits brought against it in this country.

For all of these reasons, this court finds that the third-party complaint should not, in the interest of justice and on the basis of the principle of *forum non conveniens*, be dismissed.

V.

In conclusion, this court finds that it can assert jurisdiction over the person of third-party defendant Astilleros Espanoles, S.A., that it has subject matter jurisdiction in admiralty over the claims asserted in the third-party complaint, and that the third-party complaint should not be dismissed on the principle of *forum non conveniens*. For these reasons, the motion of Astilleros Espanoles, S.A., to dismiss the third-party complaint is denied.

ENTER:

/s/ Frank J. McGarr
United States District Judge

DATED: December 26, 1979

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 82-1751, 82-1943

IN RE: OIL SPILL BY THE AMOCO CADIZ OFF THE COAST OF FRANCE ON MARCH 16, 1978.

APPEALS OF: ASTILLEROS ESPANOLES, S.A.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. MDL 376—FRANK J. MCGARR, *Judge*.

ARGUED JANUARY 3, 1983—DECIDED FEBRUARY 3, 1983

Before POSNER and COFFEY, *Circuit Judges*, and NEAHER, *Senior District Judge*.*

POSNER, *Circuit Judge*. The supertanker *Amoco Cadiz*, which had been built in Spain by a Spanish company, Astilleros Espanoles, S.A., broke up off the coast of France in 1978, causing an extensive oil spill. French citizens who allege damage from the oil spill are plaintiffs in a suit in federal district court in Chicago under the admiralty jurisdiction, 28 U.S.C. § 1333. The principal defendants are Astilleros and various affiliates of Standard Oil Company (Indiana), including Amoco Transport Company, the owner of the *Amoco Cadiz*. The plaintiffs argue that Amoco (as we shall refer to Standard and its affiliates) is liable for the damage because of negligent operation of the ship and Astilleros because of negligent or defective design and breach of implied war-

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* Of the Eastern District of New York.

ranty. Amoco filed a cross-claim against Astilleros under Rule 13(g) of the Federal Rules of Civil Procedure and a third-party complaint against Astilleros under Rule 14(c)—pleadings that we shall refer to jointly as the "cross-claim"—alleging that Astilleros was primarily responsible for the accident and should therefore be ordered to reimburse Amoco in whole ("indemnity") or substantial part ("contribution") for any damages that Amoco is ordered to pay the plaintiffs.

Astilleros moved to dismiss the French plaintiffs' complaint and Amoco's cross-claim, urging that the district court lacked subject-matter jurisdiction of both claims and personal jurisdiction over Astilleros, and that Chicago was an inconvenient forum for Astilleros to litigate in. The district court denied the motions, 491 F. Supp. 170 (N.D. Ill. 1979), Astilleros defaulted, the court entered judgment against Astilleros on both claims, and Astilleros appeals, 28 U.S.C. § 1292(a)(3).

Although the only ground Astilleros raises on appeal is personal jurisdiction, we shall consider on our own initiative whether a products liability claim against a shipbuilder, arising out of a shipwreck on the high seas, is within the federal admiralty jurisdiction. At a time when the only test of admiralty jurisdiction was whether the wrong complained of had occurred on navigable waters, this question could be, and was, confidently answered "yes." See, e.g., *Watz* v. *Zapata Off-Shore Co.*, 431 F.2d 100, 110-11 (5th Cir. 1970). But the Supreme Court overthrew exclusive reliance on locality in *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249, 261 (1972), and held that "the relationship of the wrong to traditional maritime activity" must also be considered. Although there is considerable post-*Executive Jet* authority that a products liability claim against a shipbuilder is within the admiralty jurisdiction, see, e.g., *White* v. *Johns-Manville Corp.*, 662 F.2d 234, 239 (4th Cir. 1981), this circuit has not addressed the question.

The admiralty jurisdiction gives the federal courts jurisdiction, to a significant extent exclusive, see Currie, Federal Jurisdiction 122 (1981), over a class of disputes that need not involve a federal question or diversity of citizenship; and we have to ask what is distinctive about those disputes that might explain such a grant of jurisdiction. The answer lies in the mobility and range of ships, which enable them to do physical and financial damage at a great distance from the owners' and victims' domiciles. It would not do to limit jurisdiction to courts in those domiciles (especially since there will often be several victims, not all of whom have the same domicile), or in the place of the wrong, which will often be in international waters and therefore outside any nation's territorial jurisdiction. The solution, hit upon long ago, was to allow suit against the owner of a ship that caused damage to be brought in any port at which the ship called, through the fiction that the ship itself was the offender and therefore a proper party defendant. See Holmes, The Common Law 28-30 (1881). Being thus exposed to suit almost everywhere, maritime venturers demanded that their legal rights and duties be determined by a reasonably uniform international code rather than a myriad of local laws, and maritime nations such as the United States responded by creating a distinctive admiralty jurisdiction, enforced in national rather than local courts and drawing its remedies and doctrines in part at least from an international body of principles rather than from local law alone. See *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 160 (1920).

Since a shipwreck on the high seas is quintessentially the kind of incident for which the distinctive doctrines and remedies of admiralty law were designed, the French plaintiffs' action against Amoco, at least, is within the admiralty jurisdiction; any doubt on that score created by the fact that the damage occurred on land, see *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325, 340 (1973), is removed by the Admiralty Jurisdiction

Extension Act, 46 U.S.C. §740, see *American Waterways Operators, Inc.* v. *Askew*, 335 F. Supp. 1241, 1247 and n. 23 (M.D. Fla. 1971), rev'd on other grounds, 411 U.S. 325 (1973). If the French plaintiffs' action against Astilleros is also within that jurisdiction, then so is Amoco's Rule 13(g) cross-claim, since such a cross-claim does not need an independent jurisdictional basis. *Cenco Inv.* v. *Seidman & Seidman*, 686 F.2d 449, 452 (7th Cir. 1982). While there is a question whether admiralty impleader (Rule 14(c) does, see 6 Wright & Miller, Federal Practice and Procedure § 1465 at pp. 348-50 (1971), Amoco gained nothing by basing its cross-claim on Rule 14(c) as well as Rule 13(g). Rule 14(c) does enable the third-party plaintiff (Amoco) to force the third-party defendant (Astilleros) to defend directly against the main claim, but that is of no consequence when, as in this case, the third-party defendant is already a defendant in the main action.

But to tie jurisdiction over Amoco's Rule 13(g) cross-claim to jurisdiction over the main claim against Astilleros would make it impossible for us to decide the issue of subject-matter jurisdiction over the cross-claim until we resolved the issue of personal jurisdiction over Astilleros on the main claim. A Rule 13(g) cross-claim will lie only against an existing defendant. If Astilleros were dismissed from the main suit, then by analogy to the disposition of pendent claims when the main claim is dismissed before trial, see *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726 (1966), jurisdiction over Amoco's cross-claim, if based solely on state law, would almost certainly be declined. *Cenco Inc.* v. *Seidman & Seidman*, *supra*, 686 F.2d at 458; *Federman* v. *Empire Fire & Marine Ins. Co.*, 597 F.2d 798, 811 (2d Cir. 1979).

All this assumes that there is federal subject-matter jurisdiction over the plaintiffs' claim against Astilleros. Since jurisdiction over their claim against Amoco is incontestable, there probably is pendent jurisdiction over their claim against Astilleros arising from the same trans-

action. *Leather's Best, Inc.* v. *S.S. Mormaclynx,* 451 F.2d 800, 811 (2d Cir. 1971); *Joiner* v. *Diamond M Drilling Co.,* 677 F.2d 1035, 1040-41 (5th Cir. 1982). Although many recent decisions, including our circuit's decision in *Hixon* v. *Sherwin-Williams Co.,* 671 F.2d 1005, 1008-09 (7th Cir. 1982), reject "pendent parties" jurisdiction as a basis for allowing a diversity plaintiff to bring in an additional defendant against whom the plaintiff has a state law claim that does not satisfy the minimum amount in controversy requirement of the diversity statute, 28 U.S.C. § 1332, the admiralty setting is distinguishable. The tradition of liberal joinder, reflected in Rule 14(c), illustrates the strong admiralty policy in favor of providing efficient procedures for resolving maritime disputes.

But we need not pursue these byways. The allegations in the complaint and cross-claim that Astilleros is a culpable party in a maritime tort bring both claims within the admiralty jurisdiction directly; they need not be tied to the French plaintiffs' claim against Amoco. The builder as well as the owner of a ship can cause great injury at a great distance. The victims of that injury—which both Amoco and the French plaintiffs claim in different ways to be—should have the same generous choice of forums they would have in suing the ship's owner, and the builder in turn should have the security of having his legal duties defined by a more or less uniform system of international rules. In addition, since issues of safety in the operation of a ship and in its design or construction overlap, the experience that the federal courts have obtained as the primary tribunals for deciding issues of the former type gives them a comparative advantage in deciding the latter as well.

Cases such as *Thames Towboat Co.* v. *The Francis McDonald,* 254 U.S. 242 (1920), which hold that the breach of a shipbuilding contract is not within the admiralty jurisdiction, are inapposite. They are cases of damage at a fixed locale, that of the buyer or the seller; and most of them—the ship buyer's suit on an executory contract, or

the shipbuilder's suit for the price, for example—do not involve safety or other distinctively maritime issues at all.

So we have subject-matter jurisdiction, and can turn to the issues of personal jurisdiction that Astilleros raises. Rule 4(e) of the Federal Rules of Civil Procedure authorizes use of the local long-arm statute to obtain jurisdiction over a nonresident; and Ill. Rev. Stat. 1981, ch. 110, §17(1)(a), subjects anyone who has engaged in the "transaction of business" in Illinois to the jurisdiction of the Illinois courts "as to any cause of action arising from" that transacting. See also § 17(3). We consider first whether the cause of action in the cross-claim arises from Astilleros' transacting business in Illinois and if so whether such an application of the Illinois statute is consistent with due process.

The contract to build the *Amoco Cadiz* was signed in Chicago in 1970 after extensive negotiations, in Chicago and Spain, between Astilleros and Amoco. The nominal purchaser under the contract was a yet-to-be-formed Liberian corporation, Amoco Tankers Company. It is not one of the cross-claimants: after taking delivery of the ship, it transferred title to another Liberian corporation, Amoco Transport Company. Although Astilleros makes much of Amoco Tankers' place of incorporation, there do not appear to be any real Liberians in the picture—Liberian registry having been obtained no doubt for the none too creditable purpose of avoiding liability, rather than to conduct business in or from Liberia. The real purchaser of the *Amoco Cadiz* was Standard Oil Company (Indiana), whose headquarters is in Chicago; and while for many purposes the decision to do business through a subsidiary has legal consequences, we do not believe that Standard Oil's decision to create a Liberian subsidiary to hold title to the *Amoco Cadiz* should affect our interpretation of the Illinois long-arm statute. We doubt that Illinois would want to withdraw the protection of its laws from a major Illinois enterprise merely because the en-

terprise had created a Liberian shall in an effort (if that is what it was) to keep some of its assets out of the reach of potential creditors unlikely to be Illinois residents. Moreover, the effort apparently failed; Standard Oil is a defendant in this litigation. If the plaintiffs can pierce Standard Oil's corporate veil to get at it directly, we cannot see why Standard Oil should not be able to pierce its own veil and get at Astilleros.

To negotiate and then sign a contract in the purchaser's domicile is to transact business there in a substantial sense, thus satisfying the first requirement of section 17(1)(a). Amoco's cause of action against Astilleros clearly would "arise from" that transacting if the cause of action were for a breach of the contract, but it is not, not quite anyway. The contract provides that disputes arising under it shall be arbitrated in London. The arbitration clause has not been invoked; maybe it cannot be because the cross-claimants are different corporations from the contract signator, Amoco Tankers; but whether or not the clause might have enabled Astilleros, if it had not defaulted, to get the cross-claim stayed pending arbitration in London, or to obtain an order compelling arbitration (see section 4 of the United States Arbitration Act of 1925, as amended, 9 U.S.C. § 4), is irrelevant to interpreting Illinois' long-arm statute. The issue under the statute is jurisdiction rather than Astilleros' contract rights.

A suit for indemnity is often, though presumably not here, contractual. Goff & Jones, The Law of Restitution 258 (2d ed. 1978). And often—and here—it is at least quasi-contractual in the following sense: the parties have a preexisting contractual relationship and the suit asks the court to find in effect that they would have provided expressly for indemnity had they foreseen the incident that has given rise to the indemnity claim. *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 133-34 (1956), and *Weyerhaeuser S.S. Co.* v. *Nacirema Operating Co.*, 355 U.S. 563, 565 (1958), so interpret maritime

indemnity. If, as the cross-claim alleges, the oil spill was due not to any fault on Amoco's part but to Astilleros' negligence in designing or constructing the ship, this implies that Astilleros could have avoided a disastrous accident, for which both parties may be liable, more easily than Amoco could have. Therefore, if the parties had foreseen the possibility of such a disaster, they would have agreed that Astilleros would bear the full cost, for this would have created the right incentives for avoiding the disaster at the lowest possible cost. They would in other words have inserted an explicit provision for Astilleros to indemnify Amoco in the event that disaster struck, Amoco was sued, and judgment was entered against it. Cf. Comment, *The Allocation of Loss Among Joint Tortfeasors*, 41 So. Cal. L. Rev. 728, 743-48 (1968).

This reasoning shows that Amoco's claim for indemnity, though not strictly contractual, has the form of a contractual argument—enough so that it can be said to "arise from" the negotiation and signing of the shipbuilding contract. However, the cross-claim also asks, in the alternative, for contribution—that is, a partial rather than complete shifting of liability from Amoco to Astilleros, see Prosser, Handbook of the Law of Torts 310 (4th ed. 1971)—and it is harder to conceptualize contribution than indemnity in contractual terms. But where as in this case it is sought merely as a fallback to a claim for quasi-contractual indemnity, we consider it sufficiently related to the contract giving rise to the indemnity claim also to be within the reach of the Illinois long-arm statute. A cause of action need not be contractual to be within section 17(a)(1). *Dalton* v. *Blanford*, 67 Ill. App. 3d 91, 97, 383 N.E.2d 806, 810 (1978). Using an inadvertently apt metaphor, the Illinois Appellate Court has said that the statutory phrase "arising from" "requires only that the plaintiff's claim be one which lies in the wake of the commercial activities by which the defendant submitted to the jurisdiction of the Illinois courts." *Koplin* v. *Thomas, Haab & Botts*, 73 Ill. App. 2d 242, 253, 219 N.E.2d 646, 651 (1966), and that test is satisfied here.

We must decide next whether the Illinois statute, so interpreted, violates due process. It clearly would not have under the regime of *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 320 (1945), which allowed a state to assert jurisdiction over a nonresident whose "operations establish[ed] sufficient contacts or ties with the state . . . to make it reasonable or just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations" that the nonresident had incurred in the state. This language invites concentration on the reasonableness of allowing the state to assert jurisdiction in the circumstances of the particular case. It would be reasonable in this case. Amoco, a resident of Illinois, is complaining about conduct arising from a contract that Astilleros voluntarily negotiated with Amoco, and signed, in Illinois; Illinois is the only place where Amoco can, in the same forum, both defend against Astilleros' [sic] suit and prosecute its own claim against Astilleros growing out of that suit; and Astilleros cannot argue surprise at having to defend a suit arising from a contract negotiated and signed in Illinois with an Illinois enterprise.

But cases subsequent to *International Shoe*, notably *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958), indicated to one observer as early as 1958 that there was more to the due process limitations on personal jurisdiction than reasonableness; that "the concept of territorial limitations on state power [was] still a vital one." Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 623 (1958). This observation was confirmed recently in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980): "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State [from that of its domicile]; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of inter-

state federalism, may sometimes act to divest the State of its power to render a valid judgment." The doctrine of *forum non conveniens* (not in issue in these appeals) should provide adequate protection for a nonresident defendant's interest in not having to defend himself in some unreasonably remote location, and this is the only consideration we would have to worry about in a unitary system, whether that system comprised the courts of a single state or the federal courts, which are the courts of one nation. But the states do not comprise a unitary judicial system; they are distinct if limited sovereignties; and the sovereignty of each limits the power of the others over nonresidents. See 444 U.S. at 293. This point has even greater force when a state court (or, as here, a federal court exercising the powers granted to the state court by state law) is trying to exercise jurisdiction over a foreigner.

But this is a very different case from *Volkswagen*. The defendants there were two New York companies—an automobile distributor and one of its dealers—that had never done business in Oklahoma. The distributor sold a car to the dealer, who resold it to the plaintiffs, also New Yorkers. While driving through Oklahoma the plaintiffs had an accident allegedly because of the car's defective design. The defendants had never "been" in Oklahoma in any sense and were therefore beyond the reach of the state's sovereign powers, which are territorially limited. But Astilleros had "been" in Chicago. The contract out of which Amoco's cause of action arises was signed there following extensive negotiations there, and followed by other meetings there related to the *Amoco Cadiz* contract and to contracts for other tankers to be built for Amoco. Astilleros had the protection of Illinois' laws all the while that it was transacting business with Amoco in Chicago. It had, we think, a sufficient presence within Illinois to satisfy the territorial notions that *Volkswagen* brought back into due process analysis of personal jurisdiction.

The last question we consider is whether the district court had personal jurisdiction over the French plaintiffs' suit against Astilleros. The relationship between the contract signed in Illinois and the oil spill is looser than that between the contract and Amoco's cross-claim. The French plaintiffs' claim is not quasi-contractual and is not being prosecuted in either the place of the wrong or the domicile of one of the parties. But if it seems odd for the French to be suing the Spanish in a court in Chicago because of an oil spill off the French coast, it would also be odd if, though the French can sue Amoco in Chicago and Amoco can bring in Astilleros as a third-party defendant here, the French must go to Spain to sue Astilleros.

The French plaintiffs claim that Astilleros made a defective product which injured them. Such a claim could readily be said to arise from the negotiating and signing, in Illinois, of the contract for the construction of the allegedly defective product if the injury had been to the purchaser, Amoco, or—now that little attention is paid to privity of contract in tort suits—to a purchaser from Amoco. But the injury was to persons outside the chain of title from Astilleros. Although products liability suits brought by such "bystanders" are becoming common, see, e.g., *Codling* v. *Paglia*, 32 N.Y.2d 330, 298 N.E.2d 622 (1973), the fact remains that the French plaintiffs are not in the chain of title from Astilleros that began with its signing of the contract with Amoco Tankers, as they would be if this were the usual sort of products liability case; and since they are not, the place of that signing may seem to be irrelevant to their suit. But they were not harmed just by the defective condition of the ship; they were harmed by Amoco's operation of the ship in its defective condition, and the negotiation and signing of the contract were critical steps in the chain of events that led to the oil spill. So there is a sense in which the spill and resulting damage may be said to arise from the transaction of business in Illinois between Amoco and Astilleros; and if this conclusion is not compelled by, it is at least consistent with, the statutory language and has

the practical virtue of allowing all claims arising out of a catastrophe to be litigated at the same time in the same court.

And it does not offend due process. In terms of legitimate exercise of sovereign power (*Volkswagen*), rather than reasonable procedure (*International Shoe*), the only question is whether the defendant was in Illinois in a substantial enough way to subject it to the state's power. The plaintiffs' domicile is irrelevant. So if negotiating and signing the contract in Illinois subjected Astilleros to Illinois' territorially limited sovereignty for purposes of the cross-claim, they likewise subjected it to Illinois' sovereignty for purposes of the complaint. Although we do not think *Volkswagen* makes reasonableness irrelevant, see *Froning & Deppe, Inc.* v. *Continental Ill. Nat'l Bank & Trust Co.*, No. 82-1687, slip op. 8 (7th Cir. Dec. 9, 1982), once Chicago is conceded to be a reasonable site for the French plaintiffs' suit against Amoco and for Amoco's suit against Astilleros, considerations of judicial economy make it a reasonable site for the French plaintiffs' suit against Astilleros as well. The additional hardship to Astilleros cannot be great and is outweighed by the advantages of consolidating all the claims.

Since the district court had jurisdiction over both the complaint and cross-claim against Astilleros, the default judgments are

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

March 23, 1983

Before

Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. EDWARD R. NEAHER, *Senior District Judge**

IN RE: OIL SPILL BY THE AMOCO CADIZ OFF THE COAST OF FRANCE ON MARCH 16, 1978.

APPEALS OF: ASTILLEROS ESPANOLES, S.A.

Nos. 82-1751
82-1943

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. MDL 376

FRANK J. MCGARR, *Judge.*

ORDER

On February 17, 1983, appellant Astilleros Espanoles, S.A., filed a petition for rehearing with suggestion for rehearing *en banc*. All of the judges of the original panel have voted to deny the petition, and none of the active members of the court has requested a vote on the suggestion for rehearing *en banc*.** The petition is there-
fore DENIED.

* Hon. Edward R. Neaher, Senior District Judge of the Eastern District of New York, sitting by designation.

** Hon. Jesse E. Eschbach did not participate in the consideration or decision of the suggestion for a rehearing *en banc*.

IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MDL Docket No. 376

IN RE: OIL SPILL BY THE "AMOCO CADIZ OFF THE COAST OF FRANCE ON MARCH 16, 1978.

No. 79 C 2774

THE REPUBLIC OF FRANCE, et al.,

Plaintiffs,

vs.

AMOCO INTERNATIONAL OIL COMPANY,

Defendant.

No. 79 C 2775

CONSEIL GENERAL DES COTES DU NORD, et al.,

Plaintiffs,

vs.

STANDARD OIL COMPANY (INDIANA), et al.,

Defendants.

No. 79 C 2776

BRETAGNE-ANGLETERRE-IRLANDE, S.A., (Society Anonymous), a French corporation, d/b/a BRITTANY FERRIES, for itself and on behalf of all others similarly situated, et al.,

Plaintiffs,

vs.

ASTILLEROS ESPANOLES, S.A.,

Defendant.

MEMORANDUM OPINION AND ORDER

Astilleros Espanoles, S.A. ("Astilleros") has filed motions to dismiss in three actions originally brought in the United States District Court for the Southern District of New York. In two of these, *Conseil General des Cotes du Nord* v. *Standard Oil Company (Indiana)* (the "Cotes du Nord" case) and *Bretagne-Angleterre-Irlande, S.A.* v. *Astilleros Espanoles, S.A.* (the "Bretagne" case), the plaintiffs seek recovery for damage that occurred as a result of the Amoco Cadiz casualty and oil spill off the northwest coast of France on March 16, 1978. As against Astilleros, they allege negligent design and construction, breach of express and implied warranties and strict liability in tort. In the third action, *The Republic of France* v. *Amoco International Oil Company* (the "AIOC" case), Astilleros is the third-party defendant in an action brought by AIOC for contribution and indemnification as well as for direct liability based on negligence. These cases were consolidated in this district pursuant to an order issued by the Judicial Panel on Multidistrict Litigation. *In re Oil Spill by the "Amoco Cadiz" Off the Coast of France on March 16 1978*, No. 376 (J.P.M.L. June 4, 1979) (per curiam. *See* 28 U.S.C. §1407.

Astilleros moves for dismissal on four grounds: a lack of personal jurisdiction; insufficiency of service of process; a lack of subject matter jurisdiction[1] and forum non conveniens. These arguments will be addressed *seriatim*.

Although they have been recited elsewhere, the nature of several of the arguments raised requires that there be a brief recitation of the facts. Astilleros is a Spanish corporation engaged in ship construction and repair. Its principal office and each of its five shipyards are located in Spain.

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[1] Astilleros has moved to dismiss for lack of subject matter jurisdiction in the *Cotes du Nord* and *AIOC* cases only. No such motion was brought in connection with *the Bretagne case.*

Astilleros designed, built and tested the Amoco Cadiz and its three sisterships during the 1970's for Amoco Tankers Company ("Amoco Tankers"). Although the ships were constructed in Spain and the contract to build the Amoco Cadiz was executed in Chicago, Astilleros held several meetings with representatives from the Amoco parties in New York. These discussions concerned the design, plans and specifications for the four vessels. Initially these conversations involved the first two ships to be built, the Amoco Milford Haven and the Amoco Singapore. Inasmuch as the Amoco Cadiz incorporates the same vital systems and essentially the same design as her sisterships, these discussions also related to, and later specifically included, the Amoco Cadiz.

At the time that the Cotes du Nord and Bretagne suits were filed, Astilleros was under contract with Wesley D. Wheeler Associates, Ltd. ("Wheeler") a marine consulting firm which offers general services to the maritime industry. Wheeler had an agreement with Astilleros to act as the latter's representative to solicit contracts for ship repair, in return for which Wheeler was to receive commissions based on work performed by Astilleros on vessels owned or managed by United States companies.

The fact that these cases were transferred here from the Southern District of New York has no effect on what law should be applied. Transfer orders, issued pursuant to the multidistrict rules, 28 U.S.C. § 1407, do not alter the requirement that personal jurisdiction must be established in the transferor court where the action originally was brought. *In re Library Editions of Children's Books*, 297 F. Supp. 385, 387 (J.P.M.L. 1968). Thus, this court must look to the law of New York as though these cases were still in the district court for the Sourthern District of New York.

The two provisions under New York law which provide for personal jurisdiction relevant here are set forth in sections 301 and 302(a)(1) of the New York Civil

Practice Law and Rules. N.Y. Civ. Prac. R. 301 and 302 (a)(1) (McKinney 1972 and Supp. 1981).

II.

The issues raised in both the *Cotes du Nord* and *Bretagne* cases with respect to personal jurisdiction over Astilleros are the same and will be addressed together. Astilleros contends that the plaintiffs seek only to assert jurisdiction pursuant to C.P.L.R. § 301. Indeed, while the plaintiffs do not concede that long-arm jurisdiction is precluded in this instance, they base their entire argument upon a finding of jurisdiction under section 301.

Section 301 provides that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." This has been interpreted as providing five bases for jurisdiction: 1) presence when the action commenced; 2) continued presence; 3) contacts related to the cause of action; 4) use of our courts; and 5) the presence of a *res*. Weinstein, Korn & Miller, *New York Civil Practice*, ¶301.10 at 3-21 (1977). Only the first two grounds are relevant here.

The plaintiffs served Wheeler in its capacity as New York agent for Astilleros. They claim personal jurisdiction exists over Astilleros on the grounds that Wheeler's activities for the benefit of Astilleros establish that Astilleros is "doing business" and therefore "present" in New York for jurisdictional purposes.

Under the corporate presence doctrine, the test of whether the foreign corporate defendant is doing business in the jurisdiction requires consideration of the activities of the corporate representative to determine "if it does local business not occasionally or casually, but with a fair measure of continuity." *Masonite Corp.* v. *Hellenic Lines, Ltd.*, 412 F.Supp. 434, 438 (S.D. N.Y. 1976) *quoting Tauza* v. *Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.Y. 915 (1917).

In its motion, Astilleros asserts that Wheeler is an independent agent, whose activities on behalf of Astilleros constitute mere solicitation and that this is an insufficient basis for personal jurisdiction. According to Astilleros, it owns no stock in Wheeler and Wheeler is not an employee of Astilleros. Wheeler is under an agreement to use its best efforts to obtain ship repair work for Astilleros. In return, Astilleros pays Wheeler on a commission basis for work performed on vessels owned or managed by United States companies. Astilleros maintains further that less than one-half of one percent of its business at the time these actions were brought was done through Wheeler and that Wheeler derives only five percent of its total revenue from Astilleros.

After considering these facts in light of the applicable case law, the court finds that it must agree with Astilleros. In *Miller* v. *Surf Properties, Inc.* 4 N.Y. 2d 475, 176 N.Y.S. 2d 318, 151 N.E. 2d 874 (Ct. App. 1958), the New York Court of Appeals held that a Florida hotel corporation could not be considered to be doing business in New York through the acts of its hotel representation service. Although the service listed the defendant's name in the telephone book and listed its office as the defendant's office, it merely solicited and received customers' reservations which then had to be confirmed by the defendant in Florida. The court found that these activities did not require the exercise of judgment and discretion necessary to constitute more than mere solicitation by an agent in New York. *Id.* at 48, 176 N.Y.S. 2d at 322, 151 N.E. 2d at 877.

The degree of judgment and discretion exercised by an agent are the principal factors relied upon by the New Yourk courts. In *Sheldon Estates* v. *Perkins Pancake House*, 48 App. Div. 2d 936, 369 N.Y.S. 2d 806 (2d Dept. 1975), the court refused to find personal jurisdiction over a foreign corporation where the primary function of its agent was to solicit business. The agent possessed no authority to bind the corporation and all of the agent's

acts were subject to corporate approval. Conversely, personal jurisdiction over a foreign corporation has been upheld only where the in state representative was found to have exercised a great deal of independent judgment and discretion to the point the agent was in fact the *alter ego* of the foreign corporation or at least vital to the defendant's corporate existence. *See Trummer* v. *Hilton Hotels Internat'l Inc.*, 19 N.Y. 2d 533, 281 N.Y.S. 2d 41, 227 N.E. 2d 851 (Ct. App.), *cert. denied*, 389 U.S. 923 (1967); *Gelfand* v. *Tanner Motor Tours, Ltd.*, 385 F.2d 116 (2d Cir. 1967), *cert denied*, 390 U.S. 996 (1968).

Another factor to be considered is the amount of corporate business derived from the activities of the in state representative. In *Dunn* v. *Southern Charters, Inc.*, 506 F.Supp. 564 (E.D. N.Y. 1981), the court held that a foreign corporation was not doing business in New York for jurisdictional purposes where, *inter alia*, it had never derived more than one and one half percent of its total sales revenue from its New York customers. *Id.* at 567. *See also Stark Carpets* v. *McGeough Robinson, Inc.*, 481 F.Supp. 499, 504-05 (S.D. N.Y. 1980). Of course it is impossible to state that a specific percentage of Astilleros' revenues must be derived through Wheeler in order to find jurisdiction under section 301, but the court notes that the percentage involve here is relatively small.

In sum, the court finds that Wheeler lacks a sufficient degree of discretion and judgment to warrant a finding that its activities on behalf of Astilleros constitute more than mere solicitation. For this reason, the court cannot consider Astilleros present in New York for jurisdictional purposes, and hereby declines to assert personal jurisdiction under § 301.

The court, however, will *sua sponte* apply the New York long-arm statute in these cases. For the reasons that follow, the court finds that it has personal jurisdiction over Astilleros pursuant to C.P.L.R. § 302(a)(1).

III.

Astilleros argues that personal jurisdiction does not exist under the New York long-arm statute. N.Y. Prac. Law § 302(a)(1) (McKinney 1971 and Supp. 1981). Although this issue was raised and argued in the context of the *AIOC* case, the court's findings will be applied, *sua sponte*, to the *Cotes du Nord* and *Bretagne* cases as well.

The relevant portions of the long-arm statute, C.P.L.R. § 302(a)(1) provide as follows:

> (A) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nondomiciliary . . . who in person or through an agent:
>
> 1. transacts any business within the state or contracts anywhere to supply goods or services in the state;

Id. In determining whether a foreign corporation has "transacted business" in New York, the court must inquire as to "whether, looking at the totality of the defendant's activities within the forum, purposeful acts have been performed in New York by the foreign corporation, albeit preliminary or subsequent to" the execution of the contract. *Sterling Nat'l Bank & Trust, Co. of New York* v. *Fidelity Mortgage Investors,* 510 F.2d 870, 873 (2d Cir. 1975), *quoting Galgay* v. *Bulletin Company, Inc.,* 504 F.2d 1062, 1064 (2d Cir. 1974).

In order to comport with the due process clause of the Constitution, the non-resident over whom jurisdiction is being asserted must have such "minimum contacts" with the forum state that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 (1945), *quoting Milliken* v. *Meyer,* 311 U.S. 457, 463 (1940); *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 (1957); *Hanson* v. *Denckla,* 357 U.S. 235 (1958).

Whether there exist such minimum contacts such as to satisfy the due process clause cannot be determined by a set formula or "rule of thumb," but must be determined from the particular facts of each case. *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961); *Franklin Nat'l Bank* v. *Krakow*, 295 F. Supp. 910 (D. D.C. 1969). The test is a flexible one which emphasizes the reasonableness of subjecting a defendant to suit in a foreign jurisdiction. *Shaffer* v. *Heitner*, 433 U.S. 186, 203-04 (1977). There must be some conduct by virtue of which the defendant may be said to be transacting business within the forum state, thereby invoking the benefits and protections of its laws. *Hanson* v. *Denckla, supra* at 253. The court must examine whether the "defendant's conduct and connection with the forum state are such that he could reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980). Thus, it is the nature and quality of the defendant's acts which must be examined in determining whether personal jurisdiction exists. *International Shoe Co.* v. *Washington, supra* at 319.

Astilleros offers several arguments in support of the contention that it has not transacted business in New York. These include the argument that AIOC be required to adhere to the previous statement set forth in the affidavit of Joseph Wren, Amoco's Manager of Marine Planning and Construction, submitted in opposition to Astilleros' motion to dismiss in the Illinois limitation proceeding, that the "contract to build the Amoco Cadiz was negotiated over a two-week period during July, 1970 in Chicago, Illinois," and that the contract was signed in Chicago on July 31, 1970. *In re Oil Spill by the "Amoco Cadiz" Off the Coast of France on March 16, 1978*, No. MDL 376 (N.D. Ill. Dec. 26, 1979) (hereafter referred to as the "December, 1979 opinion"). Astilleros maintains that AIOC should now be estopped from claiming that negotiations constituting the transaction of business took

place in New York. Astilleros asserts further that, even if the negotiations in New York did involve the Amoco Cadiz, the causes of action alleged here did not arise from and are not related to those negotiations.

Astilleros buttresses its claims with several affidavits and exhibits. Each affiant swears that no discussions relating to the design or financing of the ship took place in New York except for those which were trivial in nature or occurred at the urging of the Amoco parties. AIOC, on the other hand, offers counter-affidavits and exhibits attesting to the occurrence of several important meetings in New York.

The court does not accept Astilleros' estoppel argument. Although previously the court acknowledged that "negotiations . . . took place in Chicago concerning the technical specifications, manufacture and operation of the Amoco Cadiz," the December, 1979 opinion, slip op. at 8, this in no way precludes Astilleros from participating in similar negotiations in New York so as to satisfy the transaction of business test of the New York long-arm statute. The place where the contract was executed is not the exclusive point of inquiry, another determining factor is whether negotiations "in furtherance of" the contract were held in New York and the degree of importance attached to them. *See National Iranian Oil Co.* v. *Commercial Union Insurance Co. of New York*, 363 F.Supp. 129 (S.D. N.Y. 1973). *See, e.g., Liquid Carriers Corp.* v. *American Marine Corp.*, 275 F.2d 951 (2d Cir. 1967).

Negotiations relating directly to the contract to build the Amoco Cadiz occurred primarily in Chicago because the Amoco parties fortuitiously moved its offices there. However, the facts nevertheless indicate that Astilleros also had a deliberate and consistent course of dealing with the Amoco parties in New York. For instance, the design of the vessel was determined during the course of discussions held in New York. Moreover, discussions were held in New York on March 22 and 23, 1976, con-

cerning certain guarantee items of the Amoco Cadiz. *See AIOC's* Memorandum in Opposition to Astilleros' Motion to Dismiss, Exh. B. During these meetings, agreement was reached on several key issues. These include, *inter alia,* initial work and repair work on the main boiler and work on the electrical equipment and the steering gear. Several other meetings concerning guarantees were held later that year.

Contrary to Astilleros' claims that these meetings were of minimal importance, it is evident that topics discussed were of vital importance to the ultimate completion of the vessel. By virtue of these meetings, Astilleros performed purposeful acts within the jurisdiction. Although the subjects discussed at the meetings were subsequent to the execution of the contract, they were nonetheless crucial to its completion. *See, e.g., Moser* v. *Boatman,* 392 F.Supp. 270, 273-74 (E.D. N.Y. 1975); *Atlantic Metal Prods., Inc.* v. *Blake Construction Company, Inc.,* 40 App. Div. 2d 966, 338 N.Y.S. 2d 716 (1st Dept. 1972).

In order to qualify under the transaction of business test, the defendant must engage in some purposeful activity in New York so that the defendant can be said to have invoked the benefits and protections of the laws of New York. *Franklin National Bank* v. *Krakow,* 295 F.Supp. 910 (D. D.C. 1969). From these facts, it is clear that Astilleros has satisfied these requirements.

Another argument that merits some consideration is the claim that the only design systems discussed in New York were those belonging to the Amoco Milford Haven and the Amoco Singapore, the sisterships of the Amoco Cadiz. According to Astilleros, any contacts with the forum based upon negotiations concerning the structure of the sisterships are irrelevant to this inquiry. While the court, in the December, 1979 opinion, limited its consideration to those negotiations pertinent to the Amoco Cadiz and not to its sisterships, it is now apparent that the design, plans and specifications for hulls 93 and 94 (the Amoco Milford Haven and the Amoco Singapore)

that were discussed in and resulted from Astilleros' business activity in New York, were essentially the same plans and specifications for hull 95, the Amoco Cadiz. The court cannot separate the fruits of these negotiations but must consider them *in toto*.

Moreover, it is undisputed that these meetings were numerous and substantive in nature. The parties evidently met repeatedly in New York to discuss details pertaining to the basic design and systems ultimately installed in all four vessels. Clearly, these negotiations amount to substantial business activity by Astilleros in New York. These contacts alone are sufficient to warrant a finding of personal jurisdiction over Astilleros pursuant to the New York long-arm statute, C.P.L.R. § 302(a)(1).

Next, Astilleros focuses on the requirement in C.P.L.R. § 302(a)(1) that the cause of action alleged must "arise from" one of the jurisdictional acts set forth in the long-arm statute. Specifically, Astilleros maintains that since the claims alleged here sound in tort, long-arm jurisdiction can be established only by finding that Astilleros' contacts with New York are related in that they are premised on tortious conduct. Personal jurisdiction must be denied, according to Astilleros, since the contacts alleged arise from the transaction of business with the forum and these contacts could only support claims sounding in contract, not in tort.

This argument was raised and rejected in the Illinois limitation proceeding. There, Astilleros contended that "because Transport's claim sounds in tort, this court's inquiry must be limited to whether a tortious act was committed in Illinois." The December, 1979 opinion, slip op. at 6. In rejecting this argument, the court held that the Illinois transaction of business test, Ill.Rev.Stat. ch. 110, §17(1) (1977) (which provided the basis for the statute now at issue, C.P.L.R. §302(a)(1)) belies such a narrow interpretation since the provision provides that a person submits himself "to the jurisdiction of the courts of this state as to any cause of action arising

from the doing of any" jurisdictional act. *Id.* (citation omitted).

The New York statute has been applied in a similar fashion. *See Longines-Wittnauer Watch Company, Inc.* v. *Barnes & Reinecke, Inc.*, 15 N.Y. 2d 443, 261 N.Y. 2d 8, 209 N.E. 2d 68 (Ct. App. 1965), *cert. denied sub. nom., Estwing Mfg. Co.* v. *Singer*, 382 U.S. 905 (1965). There, the Court of Appeals held that C.P.L.R. §302(a)(1) is not limited to actions in contract, but applies equally to actions in tort so long as the actions are supported by a sufficient showing of facts. *See* N.Y. Advisory Comm. Rep. [N.Y. Legis. Doc. 1958, No. 13] 39-40. The defendant's contacts with New York must simply be connected to the subject matter of the suit in order to establish personal jurisdiction, without regard to the specific theory underlying the action. *See Moser* v. *Boatman*, 392 F.Supp. 270 (E.D. N.Y. 1975). *See also Milton R. Barrie Company, Inc.* v. *Levine*, 54 App. Div. 2d 642, 387 N.Y.S. 2d 627 (1st Dept. 1967).

Astilleros' argument that the alleged tortious activity of designing and constructing the Amoco Cadiz occurred in Spain and, therefore, is in no way connected to the numerous meetings in New York, either before or after the execution of the Amoco Cadiz contract, is without merit. The meetings pertained to the design and construction of the ship. The physical acts that occurred in Spain are but a consequence of those acts that occurred in New York and elsewhere. Thus, the court finds that the torts alleged, negligent design, manufacture and construction of the ship on its steering system, breach of express and implied warranties, and strict liability therefor, are related to the commercial activity which transpired in New York.

Next, Astilleros asserts that application of the New York long-arm statute, under these circumstance, violates the due process clause. It claims further that a special due process rule must be applied in products liability cases. The latter argument has already been rejected

in a previous opinion so that it need not be considered further. *See* the December, 1979 opinion, slip op. at 9.

As noted earlier in this memorandum, numerous discussions were held in New York concerning guarantees for repair work and new construction relating specifically to the Amoco Cadiz. Other meetings were held involving the plans, design and manufacture of several vessels, one of which was the Amoco Cadiz. Astilleros voluntarily conducted these negotiations in New York. It therefore invoked the benefits and protections of the laws of New York. Astilleros' contacts were neither singular in occurrence nor were they the consequence of a "fortuitous circumstance." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). Representatives were deliberately sent to New York to discuss and negotiate guarantee items for the Amoco Cadiz and to negotiate the design and specifications for several vessels, including the Amoco Cadiz.

These activities satisfy the due process requirement necessary to the application of the long-arm statute. Accordingly, the court finds that Astilleros transacted business in New York. This business was of such a nature and sufficiently substantial that the maintenance of these actions does not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) *quoting Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940). For these reasons, the court finds that personal jurisdiction exists over Astilleros pursuant to the New York long-arm statute, C.P.L.R. §301(a)(1) in the *Bretagne*, *Cotes du Nord* and *AIOC* cases. Astilleros' motions to dismiss for lack of personal jurisdiction are hereby denied.

IV.

Next, Astilleros claims in the *Cotes du Nord* and the *AIOC* cases that the court lacks subject matter jurisdiction. This argument is premised principally on the deci-

sion of the Supreme Court in *Executive Jet Aviation, Inc.* v. *City of Cleveland,* 409 U.S. 249 (1972). *Executive Jet* precludes admiralty jurisdiction over a tort action unless the defendant's conduct constitutes traditional maritime activity. Astilleros contends that its shipbuilding activity does not constitute traditional maritime activity and that the tortious claims alleged here, *inter alia* negligent design and manufacture of the Amoco Cadiz, are not sufficiently related to traditional maritime activity so as to come under the court's admiralty jurisdiction.

The court has already analyzed the application of *Executive Jet* to the Amoco Cadiz casualty. *See* the December, 1979 opinion, slip op. at 10-15. In finding that it did have admiralty jurisdiction in the limitation proceeding, the court focused on several factors, not the least of which was the fact that suits alleging negligent design, manufacture or assembly as the proximate cause of a maritime accident have long been cognizable in admiralty. *Id.* slip op. at 14-15.

The same allegations form the basis of the actions at issue here. We adopt and incorporate into this opinion the reasons expressed in the December, 1979 opinion and find that the claims alleged herein are sufficiently related to traditional maritime activity so as to be within the purview of federal admiralty jurisdiction. Astilleros' motions to dismiss for lack of subject matter jurisdiction are hereby denied.

V.

Finally, Astilleros seeks dismissal of these actions on the theory of *forum non conveniens.* The leading federal decision on *forum non conveniens* is *Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501 (1947). "The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." 330 U.S. at 507. Many factors to be analyzed were enumerated by the Court.

> If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to enforcibility [sic] of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harrass," [sic] or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. [footnote omitted.] But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

330 U.S. at 508.

Dismissal on the basis of this principle requires that there in fact be a significantly more convenient alternative forum in which the lawsuit may be maintained. Such alternative forum must be able to assert jurisdiction over all parties and to award complete relief. *Swift & Co. Packers* v. *Compania Columbia Del Caribe, S.A.*, 339 U.S. 684 (1950); *see* 15 C. Wright, A. Miller and E. Cooper, Federal Practice and Procedure §3828 (1976 ed.). Finally, the burden on the defendant moving to dismiss in favor of a court of a foreign country is heavy.

In order to sustain its motions, Astilleros must establish that dismissal is both proper and just. It focuses on the inconveniences which it may face and emphasizes

its own private interests. However, the court cannot overlook the inconveniences the opposing parties would face were these actions transferred elsewhere.

One relevant consideration is the relative ease of access to the sources of proof. The sources of proof will be found in Chicago (the substance of negotiations conducted there), Spain (where the tanker was manufactured), Germany (where the steering mechanism was subcontracted), and France (where the accident and damage occurred and where parts of the wrecked vessel are stored). It appears, therefore, that there exists no single jurisdiction which would afford such increased relative access to the sources of proof that this factor becomes determinative.

As to the availability of compulsory process, it appears that given the multinational nature of the issues and parties in interest, no single country could afford compulsory process as to all parties. The cost of obtaining attendance of willing witnesses in this country would, of course, be somewhat greater than in any European nation.

The issues presented by the oil spill are necessarily complex, numerous and difficult. They are best tried in a single lawsuit. All the other causes have been set for a single trial in one district, so that the factors presented in these motions are not nearly so pursuasive [sic] as they might be were the court addressing the same arguments in a case involving but one plaintiff and one defendant. Upon weighing the inconvenience of retaining jurisdiction against dismissal of these actions, the scales tip in favor of retention.

For all of these reasons, this court finds that it should not, in the interest of justice and based on the principle of *forum non conveniens,* dismiss these causes. Astilleros' motions are therefore denied.

VI.

In sum, the court finds that there is no personal jurisdiction over Astilleros pursuant to the corporate presence doctrine, C.P.L.R. §301, in the *Cotes du Nord* and *Bretagne* cases. Applying, *sua sponte,* the arguments and tests utilized under the New York long-arm statute, C.P.L.R. §302(a)(1) to these cases, as well as to the *AIOC* case, the court finds that personal jurisdiction exists over Astilleros in each instance. Further, the court finds that it has subject matter jurisdiction in admiralty over the claims asserted in the *Cotes du Nord* and *AIOC* actions and that these causes should not be dismissed on the principle of *forum non conveniens.* For these reasons, the motions of Astilleros to dismiss these actions are hereby denied.

ENTER:

/s/ Frank J. McGarr
United States District Judge

DATED: August 24, 1982

No. 82-2034

In the

Supreme Court of the United States

OCTOBER TERM, 1982

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE COAST OF FRANCE ON MARCH 16, 1978.

ASTILLEROS ESPANOLES, S.A.,

Petitioner,

vs.

STANDARD OIL COMPANY (INDIANA), AMOCO INTERNATIONAL OIL COMPANY, AMOCO TRANSPORT COMPANY, CLAUDE PHILLIPS, AND CONSEIL GENERAL DES COTES DU NORD, *etc., et al.,*

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE AMOCO PARTY RESPONDENTS IN OPPOSITION

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Dated: August 19, 1983

CHAS. P. YOUNG CHICAGO, INC.

QUESTION PRESENTED

The question presented by the Petition for a Writ of Certiorari is:

> May the United States District Court for the Northern District of Illinois, under the Illinois long-arm statute and consistent with the dictates of federal constitutional due process, assert personal jurisdiction over a non-resident corporate defendant where: (a) the defendant voluntarily sent its executives to solicit and to do business with Illinois residents in Illinois on at least seven separate occasions; (b) the defendant negotiated for business in Illinois; (c) the defendant, as a result of its solicitation and negotiation, executed in Illinois contracts to design and build the Amoco Cadiz oil tanker and three of its sisterships; (d) the defendant sent many letters and made many telephone calls to Illinois; (e) the defendant returned to Illinois on several occasions to discuss technical matters relating to the contracts it had executed; (f) the defendant solicited other business in Illinois; and (g) the causes of action against defendant for faulty design and construction of the Amoco Cadiz are directly related to and lie in the wake of its Illinois business activities?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 1 of the 14th Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 2-209 of chapter 110 of the Illinois Revised Statutes (formerly § 17 of chapter 110) provides:

> (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> (1) the transaction of any business within this State;
>
> (2) The commission of a tortious act within this State; . . .
>
> (c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.

No. 82-2034

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OCTOBER TERM, 1982

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE COAST OF FRANCE ON MARCH 16, 1978.

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BRIEF OF THE AMOCO PARTY RESPONDENTS IN OPPOSITION

INTRODUCTION

The District Court found that Astilleros Espanoles, S.A.'s ("Astilleros") extensive and purposeful business dealings in Illinois were more than sufficient to satisfy the "minimum contacts" requirement of due process and thus subject it to the *in personam* jurisdiction of Illinois courts. The United States Court of Appeals for the Seventh Circuit unanimously affirmed that decision. There is no reason for this Court to review. The decisions of the lower courts are consistent with

principles of due process as enunciated by this Court and do not conflict with the decision of any Court of Appeals. At most, Astilleros' Petition for a Writ of Certiorari ("Petition") raises an issue of statutory interpretation under the State of Illinois long-arm statute. Review by this Court of that state law question, however, is neither appropriate or necessary. Astilleros' Petition should thus be denied.

STATEMENT OF THE CASE

Astilleros' statement of the case in support of its Petition is incomplete. The Amoco parties[1] thus present the following restatement of the facts:[2]

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[1]The Amoco parties are Amoco International Oil Company ("Amoco International"), Amoco Transport Company ("Amoco Transport"), Standard Oil Company (Indiana) ("Standard") and Claude Phillips, an employee of Amoco International. The following companies are subsidiaries or affiliates of Standard Oil Company (Indiana) and have stock or debt which is publicly traded: Amoco Canada Petroleum, Ltd., Amoco Credit Corp., Amoco Oil Holdings, S.A., Analog Devies, Inc., Cetus Corp., Chicago Bank of Commerce, Cyprus Mines Corp., Amoco (U.K.) Exploration Company, Amoco Australia Ltd., and Solarex Corp. Amoco International and Amoco Transport are wholly-owned subsidiaries, directly or indirectly, of Standard.

[2]The Statement of the Case is based on the various pleadings, affidavits and exhibits presented to the District Court in connection with Astilleros' motion to dismiss the claims against it. These materials will be referred to as follows: "R." or "R. Supp." (refers to the Record or Record Supplement filed in Seventh Circuit Appeal No. 82-1751); "App." (refers to Astilleros' Appendix Supplement in the Seventh Circuit); "Wren Sept. 10, 1979 Aff." (refers to the Affidavit Of Joseph Wren Submitted With Memorandum Of Amoco Transport Company In Opposition To Motion Of Astilleros Espanoles, S.A. To Dismiss Third-Party Claim in No. 78 C 3693); "Wren Dec. 17, 1979 Aff." (refers to the Supplementary Affidavit Of Joseph Wren Submitted With Surreply Of Amoco Transport Company In Opposition To Motion Of Astilleros Espanoles, S.A. To Dismiss

(footnote continued on next page)

A. Astilleros Purposefully Did Business In The State Of Illinois Relating To The Claims Against It.

Astilleros is engaged in the business of ship construction and repair. (Petition at 2.) During 1969 and the early 1970's, Astilleros went to Illinois and had numerous meetings with Amoco International, an Illinois citizen.[2] As a result of those meetings, Astilleros contracted to build, and then designed and built, the Amoco Cadiz oil tanker and three sisterships. Although these vessels were constructed in Spain, the negotiations and execution of the ship design and construction contracts, as well as discussions concerning contract plans and specifications prior to, during and after construction, took place in the United States, principally in Chicago, Illinois, but also in New York. As detailed below, these numerous and substantial Illinois business dealings by Astilleros more than satisfy the "minimum contacts" requirement of due process.

1. Astilleros Voluntarily And Purposefully Came To Illinois To Negotiate And Execute Contracts With Amoco International To Build The Amoco Cadiz.

In July 1970, Astilleros sent several of its executives to Chicago, Illinois to negotiate for a contract to design, construct and sell the Amoco Cadiz. (Wren Sept. 10, 1979 Aff. ¶ 3.) These executives included Eduardo Garcia-Maurino Martinez, Astilleros' Director of Legal Services; Bartolome Carominas, commercial director for Astilleros' shipyard and the eventual signer of the Amoco Cadiz contract; and Ramon Fornelles, Astilleros' chief naval architect and technical

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(footnote continued from preceding page)

Third-Party Claim in No. 78 C 3693); "Martinez Aff." (refers to the Affidavit of Eduardo Garcia-Maurino Martinez, dated January 3, 1979, in No. 78 C 4945 (S.D.N.Y.).)

[2] Amoco International is a Delaware corporation having its principal place of business in Chicago, Illinois. (R. Supp. (Complaint in No. 79 C 3761).) Standard, the parent of Amoco International, is also an Illinois citizen and Claude Phillips, an Amoco International employee, is an Illinois resident. (*Id.*)

director. (*Id.*) They stayed in Chicago for two weeks to negotiate the Amoco Cadiz contract. (*Id.*)

While in Chicago, Astilleros' executives met and negotiated with Robert Haddow, then a Vice-President of Amoco International, and with other Amoco International employees.[4] At the conclusion of the negotiations, the contract, a forty-page document printed in English, was executed in Chicago on July 31, 1970, by Bartolome Carominas on Astilleros' behalf, with Astilleros executive Eduardo Garcia-Maurino Martinez witnessing the execution. (Wren Dec. 17, 1979 Aff. ¶ 3; App. 86.) Haddow of Amoco International executed the contract acting as agent for the

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[4]Throughout its Petition, Astilleros asserts that the contract to build the Amoco Cadiz was negotiated not with the employees of this Illinois-based corporation but with Amoco Tankers, a Liberian corporation. (Petition at 3, 4, 16, 19-23.) This contention is not correct. Astilleros negotiated with Haddow and other Amoco International employees. (Wren Sept. 10, 1979 Aff. ¶ 3; *see also* June 29, 1982 trial testimony of Mr. Haddow at pp. 4338-4346.) In fact, as of the Amoco Cadiz contract date, Amoco Tankers, the Liberian affiliate of Amoco International which ultimately took delivery of the Amoco Cadiz, was not even in existence. (App. 52.)

Although Astilleros knows with whom it dealt, the fact that Haddow was an executive employed by Amoco International was not part of the Record at the time Astilleros took its interlocutory appeal. In considering Astilleros' Petition, however, the Court should know that the evidence presented at trial established this known fact, about which there is no dispute and which, of course, may be noticed judicially. *See, e.g., Green* v. *Warden, U.S. Penitentiary*, 699 F.2d 364, 369 (7th Cir. 1983) (Court of Appeals may take judicial notice of proceedings and filings in other courts); *Rothenberg* v. *Security Management Co., Inc.*, 667 F.2d 958, 961 n.8 (11th Cir. 1982) (Court of Appeals may take judicial notice of subsequent matters in cases that are a matter of public record); *Bryant* v. *Carleson*, 444 F.2d 353, 357 (9th Cir.), *cert. denied*, 404 U.S. 967 (1971) (Court of Appeals may take judicial notice of developments in case since taking appeal).

vessel's eventual owner, Amoco Tankers, an affiliate of Amoco International not in existence when the contract was signed but which was to be formed within 60 days of the contract's execution date. (App. 86; R. Supp. (Complaint in No. 79 C 3548).)[5]

The contract obligated Astilleros to design and construct the vessel. (App. 50-72.) It also specifically provided that certain notices and communications were to be sent to Amoco International in Chicago, Illinois, as follows:

> AMOCO Tankers Company
> c/o AMOCO International Oil Company
> 500 N. Michigan Avenue
> Chicago, Illinois 60611
> CABLE ADDRESS: AMOCOSHIPS, Chicago

(App. 85.) The contract required further that Astilleros provide to Amoco International in Chicago on behalf of Amoco Tankers an irrevocable letter of guaranty. (App. 74.) Under the contract, Astilleros was to be paid a total of $23,600,000. (App. 54.)

In addition to negotiating and executing the Amoco Cadiz design and construction contract in Chicago, the same Astilleros executives also held concurrent meetings in Chicago to discuss the vessel's technical plans and specifications. (Wren Dec. 17, 1979 Aff. ¶ 4.) As a result of these meetings and discussions, Astilleros executive Bartolome Carominas signed an additional agreement in Chicago, also on July 31, 1970. (Wren Dec. 17, 1979 Aff. ¶ 5.) That agreement, again signed by Haddow of Amoco International, related to certain technical specifications for the Amoco Cadiz. (*Id.*)

Thus, after sending its executives to Chicago, Illinois, and following two weeks of negotiations there, Astilleros executed two contracts in Illinois. Those contracts for the

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[5] Amoco Tankers is not a party to the litigation because it sold the Amoco Cadiz to Amoco Transport shortly after taking delivery of the vessel in 1974. (Petition at 4.)

design, sale and construction of the Amoco Cadiz also obligated Astilleros to have further contacts with Illinois relating to that vessel.

2. During The Years Following Execution Of The Amoco Cadiz Contracts, Astilleros Voluntarily And Purposefully Returned To Illinois To Meet And To Discuss Various Design And Construction Aspects Of The Amoco Cadiz.

After executing the Amoco Cadiz contracts in July 1970, Astilleros sent its employees back to Illinois during the next several years to meet and to discuss various aspects of the Amoco Cadiz design and construction. On June 13-15, 1972, for example, two Astilleros employees, Messrs. Alvarez Serrano and A. Bausa Villar, along with Myron Sawyer, Astilleros' resident U.S. agent, met in Chicago with Joseph Wren, Amoco International's Manager of Marine Technical Services, and with other Amoco International employees. (Wren Sept. 10, 1979 Aff. ¶ 5.) The purpose of these meetings was to discuss a variety of technical details relating to the design and construction of the Amoco Cadiz and its sisterships. *(Id.)*

Similarly, in August 1975, over a year after delivery of the Amoco Cadiz, Astilleros sent employee Fernando Sicre and others to meet for more than one week in Chicago. (Wren Sept. 10, 1979 Aff. ¶ 6.) The purpose of these meetings was to discuss certain Amoco Cadiz guarantee items which were provided for by the Amoco Cadiz contracts. *(Id.)* These 1975 discussions and meetings related specifically to the Amoco Cadiz, then owned by Respondent Amoco Transport, and its performance during the first year after delivery. In addition to these business contacts in Illinois after the Amoco Cadiz contracts were negotiated, Astilleros continued its Illinois dealings by sending many letters concerning the Amoco Cadiz to Amoco's offices in Chicago. (Wren Sept. 10, 1979 Aff. ¶ 7.)

3. Astilleros Not Only Conducted Business In Illinois Relating To The Amoco Cadiz, But Also Voluntarily And Purposefully Came To Illinois And Other States To Solicit And To Do Additional Business.

The Amoco Cadiz contracts Astilleros negotiated in Illinois with Haddow of Amoco International were not the first business dealings Astilleros had in the state. To the contrary, Astilleros had met and executed other ship construction contracts with Amoco International in Illinois. On March 6, 1969, Astilleros executed contracts in Chicago to build the Amoco Milford Haven and the Amoco Singapore, two sisterships of the Amoco Cadiz. (Wren Sept. 10, 1979 Aff. ¶ 8.) The agreements for these two vessels were negotiated by Haddow and other Amoco International employees. (June 29, 1982 trial testimony of Mr. Haddow at pp. 4341-4342.)

The contract for the Amoco Europa, another Amoco Cadiz sistership, also was negotiated and signed by Astilleros in Chicago during 1970. (Wren Sept. 10, 1979 Aff. ¶ 9.) Negotiations concerning the technical plans and specifications for that ship were conducted in Chicago with Astilleros' executives at the same time. (*Id.*) Astilleros later met in Chicago during July 1976 to discuss the Amoco Singapore. (Wren Sept. 10, 1979 Aff. ¶ 8.)

In addition to Illinois meetings relating to the Amoco Cadiz and her sisterships, Astilleros' employees and representatives regularly have solicited other business in Illinois from Amoco International. (Wren Sept. 10, 1979 Aff. ¶13.) Astilleros' employees have made business trips into and have sent many letters to Illinois. (*Id.*) They also have made many phone calls to Amoco International employee Wren in an attempt to garner business. (*Id.*) In July 1971, for example, Astilleros sent executives Corominas, Fornelles, Martinez and Santiago Azpiroz to Chicago to discuss the feasibility of incorporating certain technology in proposed liquid natural gas (LNG) ships. (Wren Sept. 10, 1979 Aff. ¶11.) Similarly, in April 1973, Corominas, Fornelles and

other Astilleros' employees met in Chicago to negotiate contracts to design and to construct additional ships for the Amoco parties. (Wren Sept. 10, 1979 Aff. ¶12.)

Although Astilleros in its Petition attempts to portray itself as a Spanish shipbuilder with little reason to be called upon to defend its conduct in this country, the simple fact is that for many years Astilleros solicited ship construction business not only from Illinois residents but throughout the United States. In 1971, for example, Astilleros opened an office at 270 Park Avenue, New York, New York, for the purpose of soliciting ship construction and repair contracts in the United States. (Martinez Aff. ¶5.) Astilleros maintained that New York office until at least 1976. (*Id.*) In 1976, Astilleros retained a Mr. Wesley D. Wheeler of New York to solicit ship construction and repair contracts throughout the United States. (Martinez Aff. ¶¶ 6-8.) Astilleros also has earned millions of dollars of income as a result of its Illinois activities—for example, the contract sums paid it by the Amoco parties for the four oil tankers.

B. The Procedural History Of This Litigation.

The Amoco Cadiz, the vessel which Astilleros built as a result of its Illinois business activities, grounded off the coast of France on March 16, 1978, and lost its 220,000-ton cargo of crude oil. After the grounding, the Republic of France, various French municipalities and other French parties filed lawsuits against the Amoco parties in the United States District Court for the Northern District of Illinois alleging, *inter alia*, that the wreck was caused by the negligent design and construction of the Amoco Cadiz. In addition to suing the Amoco parties, Conseil General des Cotes du Nord along with some of the other French plaintiffs filed an action against Astilleros, alleging negligent design and construction of the Amoco Cadiz and other tortious conduct. (R. Supp. (79 C 3761).)

The Amoco parties responded to the French suits by filing third-party complaints and cross-claims against Astilleros,

stating that if faulty design and construction caused the casualty, Astilleros is responsible. The cross-claims requested indemnification or contribution in the event the Amoco parties were found liable to the various French plaintiffs. The Amoco parties also requested that the French plaintiffs be required to recover directly from Astilleros under Rule 14(c), Fed. R. Civ. P. (R. 2, 15, 23.)

Astilleros was served in these various lawsuits pursuant to the Illinois long-arm statute, which provides in pertinent part:

> (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> (1) the transaction of any business within this State; . . .
>
> (c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.

Ill. Rev. Stat. ch. 110, ¶2-209 (formerly ch. 110, ¶17) (1981). After service, Astilleros refused to appear in any of the actions, except to argue that the District Court lacked personal jurisdiction over it. (R. 3, 17, 25.) Briefs and affidavits were filed and on December 26, 1979, Judge Frank J. McGarr, now Chief Judge of the United States District Court for the Northern District of Illinois, denied Astilleros' motion to dismiss.[6]

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[6] Astilleros also argued in the District Court that the court lacked subject matter jurisdiction and that the case should be dismissed on *forum non conveniens* grounds. The District Court rejected these arguments and Astilleros did not raise them on appeal.

Stating that the "minimum contacts" requirement of the due process clause only requires "some conduct by virtue of which the defendant" may be said to have "invok[ed] the benefits and protection" of Illinois law, Judge McGarr found first that Astilleros' many Illinois business dealings easily satisfied this requirement:

> By voluntarily conducting negotiations in Illinois concerning the design and manufacture of the Amoco Cadiz, Astilleros conducted activities within the state, thereby invoking the benefits and protection of its laws. . . . The claim of alleged negligent design and manufacture of the tanker "lies in the wake" of the negotiations which took place in Chicago.

In re Oil Spill By The "Amoco Cadiz" Off The Coast Of France, 491 F. Supp. 170, 172, 174 (N.D. Ill. 1979).

Having found that Astilleros had the requisite minimum contacts in Illinois, the Court then ruled that it was subject to Section 2-209(a)(1) of the Illinois long-arm statute because it had transacted business in the state. In so ruling, Judge McGarr expressly rejected Astilleros' contention that under the Illinois long-arm statute a tort cause of action may not be based on a non-resident defendant's related Illinois business dealings.

> The mere fact that the negotiations dealt with matters ultimately framed into a contract does not insulate Astilleros from a tort claim relating to the product which was the subject of the contract. The type of activity conducted [by Astilleros] in Chicago satisfies the jurisdictional predicate of the transaction of business within this state such that the assertion of personal jurisdiction over Astilleros does not offend traditional notions of fair play and substantial justice.

491 F. Supp. at 174.

After Judge McGarr denied its motion to dismiss, Astilleros explicitly refused to defend itself further in the actions. Accordingly, on April 20, 1982, the Amoco parties requested and the District Court entered default judgments on liability against Astilleros and in favor of the Amoco parties in action Nos. 78 C 3693, 79 C 3548 and 79 C 3761. In action No. 79 C 3761, the Court entered a default judgment in favor of Conseil General Des Cotes du Nord and other French plaintiffs on May 26, 1982.

Astilleros appealed from these default judgments to the United States Court of Appeals for the Seventh Circuit, arguing that it was not subject to the personal jurisdiction of an Illinois court. The Seventh Circuit unanimously affirmed Judge McGarr's jurisdictional ruling, rejected each of Astilleros' contentions, and held that by negotiating and signing the Amoco Cadiz contracts in Illinois, and then returning to the state to discuss certain technical matters about the vessel, Astilleros had the requisite minimum contacts to subject it to the personal jurisdiction of an Illinois court. *In re Oil Spill By The "Amoco Cadiz" Off The Coast Of France*, 699 F.2d 909, 914-917 (7th Cir. 1983).

The Seventh Circuit held further that the Amoco parties' claims against Astilleros were sufficiently related to Astilleros' Illinois contacts to satisfy the Illinois long-arm statute's requirement that the cause of action arise from Astilleros' transaction of business in Illinois. Given the express provisions of the Illinois long-arm statute and the decisions of Illinois state courts interpreting those provisions, the Seventh Circuit ruled that the lawsuits for negligent design and construction relate to and "lie in the wake of" Astilleros' commercial activities in Illinois.

> Using an inadvertently apt metaphor, the Illinois Appellate Court has said that the statutory phrase "arising from" "requires only that the plaintiff's claim be one which lies in the wake of the commercial activities by which the defendant submitted to the jurisdiction of the Illinois courts," *Koplin* v. *Thomas,*

Haab & Botts, 73 Ill. App. 2d 242, 253, 219 N.E.2d 646, 651 (1966), and that test is satisfied here.

699 F.2d at 915.

Astilleros filed a petition with the Seventh Circuit for rehearing with suggestion for rehearing *en banc*, which was denied.

REASONS FOR DENYING THE WRIT

Astilleros' Petition should be denied because the decisions of the lower courts do not conflict with the rulings of this Court or any Circuit Court of Appeals. Moreover, the Petition raises, at most, an issue of state law—whether the Illinois long-arm statute allows a tort cause of action to be based on a defendant's related Illinois business activities.

Astilleros argues that review is warranted because it did not have the requisite "minimum contacts" with Illinois. The Record and facts found by the lower courts belie this claim. The facts show that Astilleros voluntarily and purposefully came to Illinois on at least seven occasions over a several year period to solicit and to do business. It acquired significant business from these Illinois visits, including the negotiation and execution of construction and design contracts in Illinois for the Amoco Cadiz. Astilleros later returned to Illinois to discuss the Amoco Cadiz, and as a result of these Illinois business dealings earned millions of dollars in fees. Given these facts, there can be no serious question that Astilleros has had more than the "minimum contacts" necessary to permit an Illinois court to exercise *in personam* jurisdiction over it.

Astilleros' claim that the lower courts have adopted a new and improper "mechanical test" for determining when a nonresident defendant is subject to a court's jurisdiction is also erroneous and does not warrant review by this Court. (Petition at 17-19.) Contrary to Astilleros' argument, the District Court did not apply a "mechanical test", stating instead that whether there exist the requisite minimum contacts "cannot be determined by a set formula . . . but must be determined

from the particular facts of each case." 491 F. Supp. at 172. Likewise, there is nothing in the Seventh Circuit's opinion to substantiate Astilleros' claim that the Circuit Court applied a different due process standard to Astilleros because it is an alien corporation.

In short, Astilleros' Petition does not raise significant constitutional or federal questions which call for this Court to exercise its discretion and review the lower courts' decisions. The Petition, therefore, should be denied.

ARGUMENT

I.

THE RULINGS OF THE COURTS BELOW DO NOT CONFLICT WITH THE DECISIONS OF ANY OTHER FEDERAL COURT OF APPEALS AND ARE FULLY CONSISTENT WITH THE PRINCIPLES OF DUE PROCESS AS ENUNCIATED BY THIS COURT.

The Constitution requires only that a non-resident defendant have such "minimum contacts" with the forum that the assertion of *in personam* jurisdiction over it does not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945). Although the test, based on the facts of each case, is flexible, the ultimate question nevertheless is whether the defendant, by its own conduct, has invoked the benefits and protection of the jurisdiction's laws. *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958).

The lower courts here applied this test, and found as a factual matter that Astilleros had invoked the benefits and protection of Illinois laws. 491 F. Supp. at 174. That conclusion was correct and does not require review. Moreover, it does not conflict with the decisions of any other Court of Appeals or depart from the principles of due process as enunciated by this Court.

Astilleros nevertheless claims error by ignoring the facts and contending that (1) its "single" contact with Illinois was the negotiation and execution of a contract with a non-

resident, non-party to the litigation; and (2) the tort actions against it are unrelated to the Illinois contract it executed. (Petition at 9, 10.) These claims not only are incorrect, they do not raise significant constitutional or federal issues meriting this Court's consideration.

First, Astilleros has mischaracterized the facts. Contrary to Astilleros' suggestion, its Illinois contacts were not limited to the execution of a single contract with a non-resident "stranger" to the litigation. (Petition at 10.) Instead, the Record shows that Astilleros intentionally came to Illinois and negotiated with Respondent Amoco International, an Illinois resident and party to the lawsuit. Astilleros also executed in Illinois, along with Amoco International, at least four separate contracts over a two-year period, including contracts for the design and construction of the Amoco Cadiz. It later returned to the state to discuss Amoco Cadiz guarantee matters after the vessel had been owned for over a year by Respondent Amoco Transport. In addition, Astilleros solicited other business in Illinois over a period of several years.

These extensive contacts, including at least seven voluntary appearances in Illinois by Astilleros to do business, are more than sufficient to subject Astilleros to an Illinois court's jurisdiction. There is no dispute among the various Circuits that when a non-resident comes into a state to negotiate or sign a contract, the due process requirement of "minimum contacts" is satisfied. *See, e.g., Standard Fittings Co.* v. *Sapag, S.A.*, 625 F.2d 630, 643-644 (5th Cir. 1980), *cert. denied*, 451 U.S. 910 (1981) (although contract was executed in France, pre-contract visit to Louisiana to promote product and a few subsequent visits to further contractual performance held to constitute sufficient minimum contacts); *Wells Fargo & Co.* v. *Wells Fargo Express Co.*, 556 F.2d 406, 415 (9th Cir. 1977) (negotiation and consummation of loan agreement constituted minimum contacts); *Du-Al Corp.* v. *Rudolph Beaver, Inc.*, 540 F.2d 1230, 1232-1233 (4th Cir. 1976) (suit based on a

contract having substantial connection to state—*i.e.*, negotiations and partial execution there); *Davis H. Elliot Co., Inc.* v. *Caribbean Utilities Co., Ltd.*, 513 F.2d 1176, 1180-1182 (6th Cir. 1975) (negotiation and execution of contract in state is sufficient); *Scovill Mfg. Co.* v. *Dateline Electric Co., Ltd.*, 461 F.2d 897, 900 (7th Cir. 1972) (contract negotiations in Illinois sufficient to satisfy due process even though contract not executed in state); *Doyn Aircraft, Inc.* v. *Wylie*, 443 F.2d 579, 582-583 (10th Cir. 1971) (negotiation and execution of contract sufficient); *Thompson* v. *Ecological Science Corp.*, 421 F.2d 467, 468-470 (8th Cir. 1970) (negotiations lasting two days and a few telephone calls sufficient); *Liquid Carriers Corp.* v. *American Marine Corp.*, 375 F.2d 951, 954-956 (2d Cir. 1967) (contract negotiations in forum sufficient).

Second, Astilleros is incorrect when it asserts that the "constitutionally required nexus between the forum and the cause of action" is lacking in that the tort actions against it are unrelated to its Illinois business activities. (Petition at 12.) Quite the contrary, the tort actions are related to its Illinois business activities because the Amoco parties' claims grow out of the agreements Astilleros made in Illinois to design properly and to construct the Amoco Cadiz. Moreover, Astilleros is also wrong when it argues that the Constitution requires that a tort action be based on tortious conduct in the forum. There is no such constitutional requirement. Nothing in the Constitution prohibits personal jurisdiction in tort actions from being based on a defendant's related business activities in the forum. Indeed, even the authorities cited by Astilleros require only that there be a relationship between the defendant, the forum and the litigation. *Rush* v. *Savchuk*, 444 U.S. 320, 327 (1980); *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977).

Astilleros' claim that the lower courts' rulings here are incompatible with this Court's decisions in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), and in *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978), is also erroneous. *World-Wide Volkswagen* was a products liability case arising

out of an Oklahoma automobile accident. In contrast to Astilleros' purposeful Illinois activities, two of the New York corporate defendants in *World-Wide Volkswagen* had never visited Oklahoma, sent employees there or done any business there. Given the absence of any voluntary or purposeful Oklahoma business activity by defendants, this Court held that they were not subject to the personal jurisdiction of an Oklahoma court.

The Court's decision in *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978), is likewise inapplicable here. In *Kulko* the Court ruled that personal jurisdiction could not be asserted by a California court over a New York resident whose only California contacts had been two short personal visits to the state some thirteen years before the lawsuit and who had neither transacted business in California nor committed a tort there. Again, unlike the defendant in *Kulko*, Astilleros has transacted in Illinois substantial business specifically involving the Amoco Cadiz.

Astilleros' reliance on *Reich* v. *Signal Oil & Gas Co.*, 409 F. Supp. 846 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976), is similarly misplaced. First, *Reich* does not hold that as a matter of constitutional due process a tort action may not be based on a non-resident defendant's business activities in the forum, as Astilleros argues. (Petition at 10.) To the contrary, *Reich* involved primarily a question of statutory construction of the Texas long-arm statute, not a broad constitutional issue. Second, the portion of *Reich* quoted by Astilleros in its Petition at page 10 was expressly disavowed by the Fifth Circuit in *Prejean* v. *Sonatrach, Inc.*, 652 F.2d 1260, 1270 n.21 (5th Cir. 1981), where the Circuit Court explained that tort actions may be based on a non-resident defendant's business activities in the forum.

> [Defendant] argues that even if it had entered into the contract with decedents' employer, the statutory nexus requirement is not met because the plaintiffs' action sounds in tort while [defendant's]

> contact with Texas would be contractual. Put simply, [defendant] takes the view that a tort suit cannot arise from a contractual contact, and presumably vice versa. [Defendant] is not alone in this view. *See Reich* v. *Signal Oil & Gas Co.*, 409 F. Supp. 846 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976). This simplistic view, however, is much too narrow an interpretation of a statute that is to be given the broadest possible construction.... Logically, there is no reason why a tort cannot grow out of a contractual contact. In a case like this, the contractual contact is a "but for" causative factor for the tort since it brought the parties within tortious "striking distance" of each other. While the relationship between a tort suit and contractual contact is certainly more tenuous than when a tort suit arises from a tort contact, that only goes to whether the contact is by itself sufficient for due process, not whether the suit arises from the contact.

The question is not, as Astilleros repeatedly asserts, the "simplistic" one of whether or not the tort—here the misdesign, improper construction and consequent grounding of the Amoco Cadiz—took place in Illinois. Instead, the issue involves a determination of whether Astilleros has the requisite minimum contacts. Given that Astilleros voluntarily and repeatedly engaged in significant business transactions concerning the Amoco Cadiz with Amoco International in Illinois, there can be no serious question that the minimum contacts test has been satisfied. Nor can there be any doubt that in light of its Illinois contacts Astilleros certainly could have reasonably foreseen being subject to the jurisdiction of an Illinois court.

In sum, the lower courts' holdings are consistent with those of the other Circuits and they do not raise any significant or unique constitutional question calling for this Court's review.

II.

ASTILLEROS' PETITION RAISES, AT MOST, A QUESTION OF STATE LAW.

The only possible legal issue raised by Astilleros' Petition is, at most, one of state statutory construction: whether the Illinois long-arm statute allows a tort cause of action to be based on a defendant's related Illinois business activities. Astilleros asserts that the statute does not allow this (Petition at 12-13), but resolution of this state law question is not, as observed in *Butner* v. *United States*, 440 U.S. 48, 58 (1979), an issue normally considered by this Court on a petition for a writ of certiorari.

> We decline to review the state-law question. The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues.

Review of this state law question is not only inappropriate, it also is unnecessary because Astilleros' interpretation of the Illinois long-arm statute is wrong, as a brief examination of the decisions construing the statute make clear.

The Illinois long-arm statute provides in part that jurisdiction over a non-resident defendant may be asserted in causes of action "arising from the doing of any of [the specified jurisdictional] acts," such as a claim arising from the transaction by defendant of any business in the state. Ill. Rev. Stat. ch. 110, ¶ 2-209(a) (1981). Illinois courts have held that this statutory requirement is satisfied whenever the cause of action sued on "lies in the wake of the commercial activities by which the defendant submitted to the jurisdiction of Illinois courts." *Koplin* v. *Thomas, Haab & Botts*, 73 Ill. App. 2d 242, 253, 219 N.E.2d 646, 651 (1st Dist. 1966); *see also International Merchandising Associates, Inc.* v. *Lighting Systems, Inc.*, 64 Ill. App. 3d 346, 350, 380 N.E.2d 1047, 1051 (1st Dist. 1978) (statute only requires that the business done be related to the cause of action).

Thus, it is clear that under the Illinois long-arm statute jurisdiction in a tort action may be based on a non-resident defendant's in-state transaction of business so long as the tort claim "lies in the wake" of the business activities. *Morton* v. *Environmental Land Systems, Ltd.*, 55 Ill. App. 3d 369, 373, 370 N.E.2d 1106, 1110 (1st Dist. 1977) (where the jurisdictional act consists of "solicitation of sales, a cause of action arising from the consequences of such a sale comes within the statutory definition"). For example, in *Dalton* v. *Blanford*, 67 Ill. App. 3d 91, 383 N.E.2d 806 (5th Dist. 1978), an Illinois court held that it could exercise *in personam* jurisdiction over a non-resident party in a tort action because the tort was related to the party's transaction of Illinois business. In that case, plaintiff sought to recover for injuries suffered in a fall from a horse, alleging the fall was caused by a defective saddle sold him by defendant. Defendant in turn filed a third-party claim for indemnification against a non-resident from whom he had purchased the defective saddle.

Although the saddle had been purchased by defendant from the third-party defendant in Oklahoma, the court found that the third-party defendant had solicited the sale in Illinois and was thus subject to the court's jurisdiction. Significantly, jurisdiction was not based on the commission of any tort in Illinois by the third-party defendant, as Astilleros says was necessary. Instead, jurisdiction for purposes of the third-party indemnification claim in tort was based on the third-party defendant's transaction of Illinois business in soliciting the sale of the saddle.

By the same token here, the basis for asserting personal jurisdiction under the Illinois long-arm statute over Astilleros is the shipbuilder's undisputed presence in Illinois to negotiate and execute design and construction contracts, to work out the technical plans and specifications for the Amoco Cadiz, and to discuss guarantee items for the vessel during the first year after delivery. The claims against Astilleros, that it negligently designed and constructed the Amoco Cadiz, are clearly related to and lie in the wake of its Illinois business activities. This is all

that the Illinois long-arm statute requires. *See, e.g., Hutter Northern Trust* v. *Door County Chamber of Commerce*, 403 F.2d 481 (7th Cir. 1968) (business transacted in Illinois must simply be related to the subject matter of the tort claim asserted); *People ex rel. Scott* v. *Police Hall of Fame, Inc.*, 60 Ill. App. 3d 331, 376 N.E.2d 665 (1st Dist. 1978) (case based on the tort of common law fraud, jurisdictional act was the transaction of business); *Technical Publishing Co.* v. *Technology Publishing Corp.*, 339 F. Supp. 225 (N.D. Ill. 1972) (the court's analysis focused primarily on the defendant's transaction of business in the state, although the court also found the commission of a tortious act in the state).[7]

The premise of Astilleros' argument, that it can be sued in Illinois only for breach of contract but not for the injuries caused by its faulty performance of the same contract, is false. The Illinois long-arm statute only requires that the cause of action against a non-resident defendant lie in the wake of its forum activities. That requirement has been met in this case, and is, in any event, an issue more appropriately considered by the federal and state courts of Illinois, not this Court.

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[7] Astilleros' claim that the Illinois Supreme Court in *Green* v. *Advance Ross Electronics Corp.*, 86 Ill. 2d 431, 427 N.E.2d. 1203 (1981), interpreted the Illinois long-arm statute to confer jurisdiction in tort actions only where the tort or injury occurred in Illinois is incorrect. (Petition at 12-13.) The parties in that case admitted that no Illinois activity of defendant had any relationship to the cause of action. 86 Ill. 2d at 435, 427 N.E.2d at 1205. In addition, the plaintiff only asserted that jurisdiction was appropriate under the portion of the Illinois long-arm statute dealing with tort actions. The question whether a tort action could be based on a related non-tortious business transaction in Illinois was never discussed or even raised. 86 Ill. 2d at 435-436, 427 N.E.2d at 1206.

III.

THE AMOCO PARTIES' CONTACTS WITH ILLINOIS ARE NOT RELEVANT TO DETERMINING WHETHER ASTILLEROS IS SUBJECT TO THE *IN PERSONAM* JURISDICTION OF AN ILLINOIS COURT.

Astilleros makes much of the fact that neither it nor Amoco Tankers is an Illinois resident, stating repeatedly in its Petition that this case only involves two non-residents and their single Illinois contract. (Petition at 3, 4, 16, 19-23.) As already discussed, that is, of course, not the case. The facts are that Astilleros dealt extensively with Amoco International, an Illinois resident corporation, in Illinois.[8] Indeed, Amoco Tankers Company, the Liberian company that Astilleros continuously asserts it negotiated with, was not even in existence during the negotiations or at the time the Amoco Cadiz contracts were executed.

Even if Astilleros had dealt in Illinois only with Amoco Tankers, another non-resident, that fact is not relevant. It is settled law that whether a non-resident corporate defendant is subject to the *in personam* jurisdiction of a court depends on the defendant's contacts and relationship with the forum, not the contacts of other parties. *See Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958).

In *Scovill Mfg. Co.* v. *Dateline Electric Co., Ltd.*, 461 F.2d 897, 900 (7th Cir. 1972), for example, a Connecticut corporation sued an English corporation in Illinois for breach of contract. Jurisdiction was based on preliminary meetings held between the parties at a Chicago trade show. On defendant's motion, the District Court dismissed for want of personal jurisdiction. The

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[8] To the extent that the plaintiff's residence is a relevant consideration on the personal jurisdiction question, three of the four plaintiffs here are Illinois residents—*i.e.*, Standard, Amoco International and Claude Phillips. The fourth plaintiff, Amoco Transport, owned the Amoco Cadiz during the time Astilleros appeared in Illinois and had discussions and meetings about the vessel.

Seventh Circuit reversed, stating that a "defendant who sends an agent into Illinois to solicit or to negotiate a contract is transacting business" in the state, and, moreover, defendant's contacts were of such importance and substance as to satisfy the miminum contacts test. 461 F.2d at 900.

In response to the same argument made now by Astilleros, that neither plaintiff nor defendant was an Illinois resident, the Seventh Circuit in *Scovill* stated:

> [W]e attach no significance to the fact that neither party is a resident of Illinois. Nonresidents as well as residents of Illinois have access to the Illinois courts and to the federal courts sitting in that state.

461 F.2d at 900.

Scovill is not unique. This Court and other courts routinely have allowed a non-resident plaintiff to bring suit against a non-resident defendant so long as the defendant has the requisite minimum contacts with the forum. *See, e.g., Perkins* v. *Benguet Consolidated Mining Co.,* 342 U.S. 437, 447-449 (1952) (non-resident plaintiff allowed to maintain suit over non-resident defendant on cause of action unrelated to defendant's forum activities); *National Can Corp.* v. *K Beverage Co.*, 674 F.2d 1134, 1137 (6th Cir. 1982) (non-resident plaintiff was able to bring suit against non-resident defendant who had "never set foot" in state but had conducted business in forum); *Quasha* v. *Shale Development Corp.*, 667 F.2d 483 (5th Cir. 1982) (defendant was subject to Louisiana court's jurisdiction in suit brought by non-resident plaintiff because it had the requisite minimum contacts with state).

In an attempt to manufacture an issue allegedly calling for review by this Court, Astilleros asserts that the Seventh Circuit upheld jurisdiction over it only by piercing the corporate veils of Standard and "others" and then by creating a contract between Astilleros and Standard. (Petition at 19-23.) Astilleros is incorrect again. Nowhere in its opinion does the Seventh Circuit hold that it was necessary to pierce

the corporate identity of any party or find a contract between Astilleros and Standard before Astilleros could be held subject to the court's jurisdiction. To the contrary, as first made clear by the District Court when it denied Astilleros' jurisdictional motion, Astilleros is subject to the *in personam* jurisdiction of Illinois courts because of its substantial Illinois business dealings. The Seventh Circuit affirmed that decision, and Astilleros' claim that it could do so only by piercing corporate identities is simply not true.[9]

IV.

THE PRESENT CASE BEARS NO RESEMBLANCE TO THE PENDING *HELICOPTEROS* DECISION.

Astilleros suggests that its Petition should be granted because it allegedly raises issues "closely related" to those in *Hall, et al.* v. *Helicopteros Nacionales de Colombia, S.A.*, 638 S.W.2d 870 (Tex. 1982), *cert. granted*, ___ U.S. ___, 103 S. Ct. 1270 (No. 82-1127, March 7, 1983). (Petition at 8, 26.) Astilleros' suggestion lacks merit. The cases are completely unrelated.

First, one of the two legal questions on which certiorari was granted in *Helicopteros*—whether a different due process

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[9] Astilleros' reliance on *Carty* v. *Beech Aircraft Corp.*, 679 F.2d 1051 (3d Cir. 1982), is misplaced. First, contrary to Astilleros' contention (Petition at 7, 24), the Third Circuit in *Carty* did not hold that cross-claims could not be used to justify jurisdiction as to a complaint. The Circuit Court did hold that solely as a matter of statutory interpretation, the Virgin Islands' long-arm statute would not permit this. *Id.* at 1063. Second, *Carty* is not relevant to this case in any event. Nowhere did the District Court or the Seventh Circuit state that the French plaintiffs did not have to establish *in personam* jurisdiction over Astilleros. Instead, as the Seventh Circuit noted, it would be "odd" to find that Astilleros had the requisite minimum contacts with respect to the cross-claims but not the complaints when both the cross-claims and complaints lie in the wake of, and are directly related to, Astilleros' Illinois conduct. 699 F.2d at 917.

standard applies to an alien resident of a foreign country as compared to a United States citizen—does not exist here. There is nothing in the District Court or Seventh Circuit opinions which suggests that a different due process standard was applied to Astilleros because it is not a U.S. corporation.

Second, the factual question presented in the *Helicopteros* case is in no way similar to Astilleros. Unlike the Peruvian helicopter company in *Helicopteros* which never once had any dealings with the plaintiffs in Texas, Astilleros had extensive, purposeful meetings and negotiations in Illinois with Respondent Amoco International, an Illinois resident. Astilleros also executed contracts in Illinois to design and construct the Amoco Cadiz and other vessels. This contrasts to the facts in *Helicopteros*, where the contracts to provide helicopter service were executed in Peru. Moreover, *Helicopteros* involved a wrongful death action, allegedly caused by pilot error, which was not based or related in any way to defendant's Texas contacts. As discussed in Section II, *supra*, however, the claims against Astilleros for negligent design and construction are related to and lie in the wake of its Illinois activities, which dealt precisely with the design and construction of the Amoco Cadiz.

In sum, given that one of the two legal issues in *Helicopteros* which the Court has agreed to consider is not raised by the lower courts' decisions here, and, that the two cases involve vastly different facts, joint consideration of the cases as suggested by Astilleros would not benefit the Court, the parties involved or other courts and litigants. Instead, such consideration only would complicate resolution of the specific issues raised by *Helicopteros*, none of which has any relevance whatsoever to Astilleros.

CONCLUSION

The lower courts found, and the Record shows, that by its own conduct Astilleros had voluntarily come into Illinois for the purpose of doing business on at least seven different occasions; that it had done business in Illinois over a several year period; and that it purposefully had sought and received the benefits and privileges of Illinois law. Given these facts, the lower courts concluded that Astilleros had more than "minimum contacts" with Illinois and could not credibly claim surprise at being haled into the state's courts. This conclusion is fully consonant with due process.

Astilleros now asks this Court to exercise its discretion and review the lower courts' rulings. There is no justification for this. Astilleros' Petition does not establish any conflict with another Circuit Court. To the contrary, Astilleros has raised, at most, a question of statutory construction under state law, an issue not warranting this Court's review. For these reasons, therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: August 19, 1983

No. 82-2034

IN THE

Supreme Court of the United States

October Term, 1982

IN RE Oil Spill by The Amoco Cadiz
Off The Coast of France on March 16, 1978

ASTILLEROS ESPANOLES, S.A.,
Petitioner,

–VS.–

STANDARD OIL COMPANY (INDIANA), AMOCO INTERNATIONAL OIL COMPANY, AMOCO TRANSPORT COMPANY, CLAUDE PHILLIPS, and CONSEIL GENERAL DES COTES DU NORD, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENTS THE COTES DU NORD PARTIES IN OPPOSITION

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August 19, 1983

Question Presented

Was the court of appeals correct in affirming the district court's decision that the Petitioner, a Spanish corporation, had sufficient contacts with Illinois to subject it to personal jurisdiction?

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BRIEF OF RESPONDENTS THE COTES DU NORD PARTIES IN OPPOSITION

COUNTER-STATEMENT OF THE CASE

Pursuant to a contract which it negotiated and executed in Chicago in 1970, Petitioner Astilleros Espanoles, S.A. ("Astilleros") designed and built the Amoco Cadiz, a supertanker which was wrecked off the coast of Brittany in March, 1978. More than

200,000 tons of crude oil escaped from the vessel, polluting more than 200 miles of the coastline of France. This massive pollution gave rise to a suit for negligence, breach of warranty and strict liability against Astilleros as set forth in the complaint of the Respondents herein, the Côtes du Nord parties.* In the same action, the Côtes du Nord parties sued Standard Oil Company (Indiana) and its related companies, Amoco Transport Company and Amoco International Oil Company which owned and operated the Amoco Cadiz.** This suit was brought in the United States District Court for the Northern District of Illinois, in Chicago. The decision as to liability of the Amoco parties is *sub judice*, after a six month trial. The Amoco parties asserted third-party claims against Astilleros for indemnification and contribution, contingent upon the success of the Côtes du Nord parties and others against the Amoco parties in the trial as to liability and a subsequent trial as to damages.

Astilleros moved in the district court to dismiss the complaints against it, alleging, *inter alia*, lack of personal jurisdiction over it in Illinois. After the district court denied that motion, Astilleros did not file an answer and refused to participate in any discovery. Thereafter, after the trial against the Amoco parties had begun, the Respondents herein obtained judgments by default and Astilleros appealed. The United States Court of Appeals for the Seventh Circuit unanimously affirmed the district court's decision that Astilleros was subject to personal

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* Referred to collectively as "the Côtes du Nord parties", Respondents are located in the province of Brittany in France. They include the Department (county) of Côtes du Nord, 43 communes (towns) in Côtes du Nord, 33 communes in the Department of Finistere, and 26 private party claimants including business organizations, oyster farmers, individual businesses and environmental organizations, all of which sustained substantial damages as a result of the oil pollution from the wreck of the supertanker Amoco Cadiz on March 16, 1978. The governing body of the Department of Côtes du Nord, its general council, is listed first in the caption. A complete list of the Côtes du Nord parties appears at pp. i-ii of Petitioner's Petition for Writ of Certiorari.

** Other claimants against the Amoco parties include the Republic of France and Petroleum Insurance Limited (on behalf of Shell U.K. Limited and Shell Nederland Raffianderij B.V., owners of the cargo which was lost).

jurisdiction in Illinois.* We respectfully submit that the decisions of the courts below were correct and that Astilleros' contacts with Illinois, detailed below, were sufficient to subject it to jurisdiction there.

A. Pre-Contract Negotiations

Astilleros is a Spanish corporation in the business of designing and manufacturing ships. Its relevant contacts with Illinois began in July, 1970. Four representatives of Astilleros, including its commercial director, chief naval architect and an attorney, went to Chicago at that time to negotiate with Amoco International Oil Company ("Amoco International"), a Delaware corporation with its principal place of business in Illinois and a wholly-owned subsidiary of Standard Oil Company (Indiana) ("Standard"). Those negotiations, which occurred over a two-week period, concerned the design, technical plans and specifications for the construction of an oil tanker, which was later named the Amoco Cadiz.

B. The Contract

The negotiations in Chicago culminated in a contract and a letter agreement, both dated July 31, 1970. In the forty-page printed contract, Astilleros agreed to design and build a 230,000 metric ton oil tanker in accordance with certain technical plans and specifications which are referred to throughout the contract and contained in the letter agreement. Astilleros agreed to deliver the vessel by July 31, 1974, for the contract purchase price of $23,600,000.

The commercial director of Astilleros executed the documents in Chicago. The other signatory to the contract and the letter agreement was Robert S. Haddow for Amoco Tankers Company ("Tankers"), a company which was not yet in existence. Tankers was described in the contract as a corporation "[t]o be organized under the laws of the Republic of Liberia" which "[u]pon its

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* A Petition for Rehearing with Suggestion for Rehearing in Banc was denied.

formation will be an affiliate of Amoco International Oil Company." According to the contract negotiated by Amoco International and Astilleros, Tankers was to come into being within sixty days of July 31, 1970.

The contract required Astilleros to send certain notices to Tankers by cable, with a confirming letter to:

> AMOCO Tankers Company
> c/o AMOCO International Oil Company
> 500 N. Michigan Ave.
> Chicago, Illinois 60611
> Cable Address: AMOCOSHIPS, Chicago.

The contract also required that Astilleros send an irrevocable letter of guaranty to Tankers in care of Amoco International at the Chicago address.

C. Subsequent Contacts With Illinois

Subsequent to the execution of the contract in 1970 Astilleros continued to have significant contacts with Illinois. During the construction period, in June, 1972, three representatives of Astilleros, including its United States agent, came to Chicago to meet with Amoco International's Manager of Marine Technical Services and his assistants. The meetings continued for two days and concerned technical matters relating to the construction of the Amoco Cadiz. In August, 1975, a year after delivery of the vessel, several representatives of Astilleros went to Chicago for more than a week to discuss with Amoco International guarantee items for the Amoco Cadiz. Astilleros also sent correspondence concerning the Amoco Cadiz to Tankers, c/o Amoco International, at the Chicago address, as required by the contract.

In addition to its contacts with Amoco International concerning the Amoco Cadiz, Astilleros had a considerable number of additional contacts with the Amoco parties in Chicago: Astilleros negotiated and signed contracts for the construction of three sister ships to the Amoco Cadiz; and Astilleros repeatedly visited and telephoned Illinois to solicit other business from the Amoco parties.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The decision of the court of appeals affirming the exercise of personal jurisdiction over Astilleros pursuant to the Illinois long-arm statute, is in accord with the past decisions of this Court.

2. The decision of the court of appeals presents no conflict with a decision of any other federal court of appeals on the same matter.

3. Astilleros' additional arguments present no "special and important reasons" for this Court to review the decision of the court of appeals. *See*, U.S. Sup.Ct. R. 17.1.

ARGUMENT

I

The Courts Below Correctly Held That Assertion of Personal Jurisdiction Over Astilleros in Illinois Comports With Due Process

There were more than sufficient contacts between Astilleros and the State of Illinois to permit assertion of personal jurisdiction such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." *International Shoe Co., v. Washington*, 326 U.S. 310, 316 (1945). *See, Shaffer v. Heitner*, 433 U.S. 186, 212 (1977).

Astilleros' activities in Illinois are undisputed and far exceed "minimum" contacts. They include the negotiation and execution of the contract and the letter agreement; negotiation of the technical plans and specifications for the vessel; repeated post-contract discussions concerning construction and operation of the Amoco Cadiz and its sister ships; post-contract correspondence sent to Chicago concerning the vessel; and repeated post-contract solicitation of business. As a result of its contacts with Illinois, Astilleros obtained significant revenue. Thus, Astilleros "purposefully avail[ed]" itself of the privilege of conducting activities" within Illinois and invoked "the benefits and protec-

tions" of Illinois law. *Hanson v. Denkla*, 357 U.S. 235, 253 (1958).

Despite its substantial and undisputed contacts with Illinois, Astilleros argues that the exercise of personal jurisdiction over it in Illinois in this case somehow conflicts with this Court's decisions in *Kulko v. California Superior Court*, 436 U.S. 84 (1978) and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). (Pet. at 9-16).* Astilleros is incorrect. Those decisions do not even suggest that the assertion of personal jurisdiction over Astilleros in this case is inappropriate.

In *Kulko*, the defendant was a New York resident who had no relevant contact whatsoever with California. His former wife, a California resident, brought an action there to modify a child custody and support agreement which the parties had entered into in New York. The sole basis upon which the California court premised jurisdiction was that, by consenting to have his daughter live in California during the school year and by sending her to California for that purpose, the defendant had performed a purposeful act in California sufficient to satisfy jurisdictional due process requirements. 436 U.S. at 94. This Court reversed, stating:

> [T]he mere act of sending a child to California to live with her mother is not a commercial act and connotes no intent to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction.

436 U.S. at 101.

The difference between this case and *Kulko* is clear. Astilleros' activities in Illinois were substantial, commercial and unquestionably connoted an "intent to obtain or expectancy of receiving a corresponding benefit" in Illinois. Indeed, Astilleros received more than $23 million as a result of the contract it signed and negotiated in Illinois. Further, as the court of ap-

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* Citations to the "Petition for a Writ of Certioriari to the United States Court of Appeals for the Seventh Circuit," filed by Petitioner is in the form "(Pet. at ___)." Citations to the Appendix are in the form "(A. at ___)."

peals correctly held, "Astilleros had the protection of Illinois' laws all the while that it was transacting business with Amoco in Chicago." (A. at 25).

This case is also different from *World-Wide Volkswagen*. There the defendants were held subject to personal jurisdiction in Oklahoma based solely upon the fact that an automobile which had been sold by the defendants in New York caused an injury to the plaintiffs in Oklahoma while they were driving through that state. This Court held that the exercise of jurisdiction over the defendants did not comport with due process, because the defendants had not carried on any activity in Oklahoma. 444 U.S. 295.

The court of appeals, in its opinion below, correctly recognized the distinction between this case and *World-Wide Volkswagen*:

> But this is a very different case from *Volkswagen* . . . The defendants [in *Volkswagen*] had never "been" in Oklahoma in any sense and were therefore beyond the reach of the state's sovereign powers, which are territorially limited. But Astilleros has "been" in Chicago. The contract out of which Amoco's cause of action arises was signed there following extensive negotiations there, and followed by other meetings there related to the *Amoco Cadiz* contract and to contracts for other tankers to be built for Amoco. Astilleros had the protection of Illinois' laws all the while that it was transacting business with Amoco in Chicago. It had, we think, a sufficient presence within Illinois to satisfy the territorial notions that *Volkswagen* brought back into due process analysis of personal jurisdiction.

(A. at 25).

Astilleros contends further that there is no connection between its activities in Illinois and the claims asserted against it by the Côtes du Nord parties and that the assertion of jurisdiction would therefore be inconsistent with this Court's holding in *International Shoe Co., v. Washington*. Again, Astilleros is

wrong. In *International Shoe*, this Court recognized that due process is satisfied if the claims asserted against a nonresident defendant "are connected with the activities within the state." 326 U.S. at 319. This test was reiterated in *Shaffer v. Heitner*, 433 U.S. at 204, where this Court stated that, in order to satisfy due process, there must be a relationship "among the defendant, the forum, and the litigation. . . ." 433 U.S. at 204. *See also Rush v. Savchuk*, 440 U.S. 320, 327 (1980).* The purpose of requiring such a relationship is to insure that the defendant may reasonably anticipate being haled into court in the state where he conducts his activities. Thus, this due process requirement "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. That test is clearly satisfied in this case.

The claims asserted against Astilleros by the Côtes du Nord parties and by the Amoco parties, are based upon theories of breach of warranty, product liability and negligence. The claims are premised upon conduct of Astilleros which began in Illinois and which later included activities by Astilleros in Illinois. The contract which Astilleros negotiated and executed in Illinois is "related to the operative facts" and the "substance" of the litigation (*see, Rush v. Savchuk*, 444 U.S. at 329), since the claims turn on whether Astilleros adequately performed that contract in fulfilling its obligations to provide a seaworthy vessel.

Astilleros' assertion that it could not have foreseen the necessity of defending an action in Illinois is disingenuous. Had Astilleros wished to avoid the potential for personal jurisdiction in Illinois, it certainly could have structured its "primary conduct" in such a way as to assure that it would not be amenable

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* Astilleros admits that the Illinois long-arm statute—upon which personal jurisdiction is predicated here—satisfies this due process requirement:

> The constitutionally required nexus between the forum conduct and the cause of action is recognized in the Illinois long arm statute which provides that "only causes of action arising from acts enumerated herein may be asserted against a defendant. . ."

(Pet. at 12).

to suit there.* For example, Astilleros could have demanded that the contract negotiations and execution occur in Spain. Astilleros could have rejected the opportunity to solicit further business in Illinois and could have forbidden its employees to travel to Illinois concerning the continued administration of the contract for the construction of the Amoco Cadiz. It did not do so. Rather, Astilleros availed itself of the opportunity and privilege of conducting activities in Illinois. Under these circumstances, as this Court stated in *World-Wide Volkswagen* 444 U.S. at 297:**

> . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state.

Thus, it is clear that the exercise of personal jurisdiction over Astilleros in this case by the federal courts in Illinois fully comports with the minimum contacts requirements of the Due Process clause and is consistent with the prior decisions of this Court.

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* Astilleros certainly would be amenable to jurisdiction in Illinois, based on its contacts with that state, in an action on the contract. Cf. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). The fact that the claims sound in tort is irrelevant, since they relate to the same jurisdictionally sufficient conduct.

** Astilleros' contention that the arbitration and choice of law clauses in the contract demonstrate that it could not foresee being subject to jurisdiction in Illinois is baseless. Considerations such as choice of law are not determinative in examining amenability to personal jurisdiction under the Due Process clause. *Shaffer v. Heitner*, 433 U.S. at 215.

II

Petitioner Has Not Set Forth Any Basis For Review By This Court

Petitioner has not made any showing that this case is within any of the categories discussed in Sup.Ct.R. 17.1, which sets forth considerations governing review on certiorari. Yet, in an attempt to invoke a basis for review, Astilleros argues that the court of appeals *sua sponte* pierced the corporate veil of Tankers, a Liberian subsidiary of Standard, in order to find a basis for jurisdiction over Astilleros in Illinois. Astilleros claims further that this piercing presents a conflict with various other circuit court decisions on the same issue. This argument is without merit.

The language in the opinion of the court of appeals to which Astilleros points is not the basis for the court's holding that personal jurisdiction could properly be asserted over Astilleros in this case. (A. at 21-22). Rather, Judge Posner addressed the contention of Astilleros, reiterated in its petition for certiorari, (Pet. at 16), that Astilleros could not possibly have foreseen a suit in Illinois because it was a Spanish shipbuilding company contracting with a Liberian company for the construction of a vessel in Spain. Judge Posner correctly disposed of that argument by recognizing that the record is devoid of reference to "real Liberians." In fact, the record reflects that Astilleros negotiated in Chicago with Amoco International, a Delaware corporation with its principal office in Chicago, which was a wholly-owned subsidiary of Standard, which was also headquartered there. Tankers, a Liberian subsidiary formed after the contract was executed, was created by Amoco International to own the vessel during construction.

Moreover, the court's discussion of the corporate identities of the various Amoco parties is irrelevant to the determination of the jurisdictional issue in this case. The assertion of jurisdiction over a nonresident defendant must be based upon the activities of the *defendant* in the forum, and not upon the activities or identity of plaintiffs, cross-claimants or anyone else. As this Court made clear in *Hanson v. Denkla*, 357 U.S. at 253, it is

the *defendant's* activities in the forum which must be examined, and "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *See also, Kulko*, 436 U.S. at 93-94; *World-Wide Volkswagen Corp.*, 444 U.S. at 298.

Astilleros' attempt to bootstrap Judge Posner's discussion into a conflict between the circuits is frivolous. None of the cases cited by Astilleros involve a piercing of the corporate veil of the plaintiff in order to find personal jurisdiction over a defendant.

Astilleros also contends that the court of appeals' interpretation of the Illinois long-arm statute conflicts with a decision of the Illinois Supreme Court, *Green v. Advance Ross Electronics Corp.*, 86 Ill. 2d 431, 427 N.E.2d 1203 (1981). (Pet. at 12). However, the court of appeals' decision (as well as that of the district court) that a tortious act which "lies in the wake" of a transaction of business in the state satisfies the "arising from" language of the Illinois long-arm statute, Ill. Rev.Stat., Ch. 110, §2-209 (1983), is clearly in accord with Illinois decisional law. See, *e.g.*, *Koplin v. Thomas, Haab & Botts*, 73 Ill. App.2d. 242, 219 N.E.2d 646 (1st Dist. 1966).

Green simply is not in point here. The case at bar concerns jurisdiction arising from the "transaction of any business" in Illinois under § 2-209(a)(1). *Green* dealt with jurisdiction arising from "the commission of a tortious act" in Illinois under § 2-209(a)(2). The court specifically declined to discuss any other basis for jurisdiction:

> As the defendants assert long-arm jurisdiction solely on the ground that Green, Sr., committed a tortious act within this State, there is no occasion to consider any other possible basis for jurisdiction.

427 N.E.2d at 1206.

Furthermore, interpretation of state law by a court of appeals or a district court sitting in that state is entitled to great weight and is not an issue normally appropriate for review by this Court by on a petition for certiorari. *Butner v. United States*, 440 U.S. 48, 58 (1979); *Bishop v. Wood*, 426 U.S. 341, 345-46 (1976).

Astilleros also raises a "policy" argument that is worth little comment. (Pet. at 23-25). Astilleros claims that there is a question here of whether an alien corporation is entitled to the same protection under the Due Process clause as a United States resident. However, there is absolutely nothing in the record which suggests that the court of appeals based its decision upon the notion that Astilleros was somehow entitled to less due process than a United States resident. To the contrary, the court of appeals stressed that the due process restraints on a state's extraterritorial exercise of personal jurisdiction are even greater where the defendant is a foreigner. (A. at 25)

Finally, Astilleros argues that its petition for certiorari should be granted because this case presents questions substantially similar to those presented in *Heliocopteros Nacionales de Colombia, S. A. v. Elizabeth Hall, et al.*, 82-1127. (Pet. at 8, 26). Once again, Astilleros is wrong. *Heliocopteros* presents the issue of whether a nonresident defendant can be subjected to personal jurisdiction in a state based upon certain limited activities performed in the state which are unrelated to the conduct giving rise to the cause of action asserted against it. 51 U.S.L.W. 3636 (March 1, 1983). As demonstrated above, in this action there is a clear nexus between the activities of Astilleros in Illinois and the claims asserted against it. The jurisdictional issues in *Heliocopteros* are distinct from the jurisdictional issues presented in this case, which do not merit review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 19, 1983

No. 82-2034

In the

Supreme Court of the United States

IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF THE COAST OF FRANCE ON MARCH 16, 1978

ASTILLEROS ESPANOLES, S.A.,

Petitioner,

vs.

STANDARD OIL COMPANY (INDIANA), AMOCO INTERNATIONAL OIL COMPANY, AMOCO TRANSPORT COMPANY, CLAUDE PHILLIPS, and CONSEIL GENERAL DES COTES DU NORD, etc., et al.,

Respondents.

REPLY BRIEF OF ASTILLEROS ESPANOLES, S.A. IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

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Dated: SEPTEMBER 2, 1983

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Because the briefs of Respondents largely ignore the central issue in this case, and because the Amoco parties, through misstatements of fact and improper supplementation of the record,[1] attempt to pierce the corporate

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[1] This Court may not properly take judicial notice of the trial testimony of Robert Haddow or of the Martinez affidavit, filed in another case, since neither is a source of adjudicative facts "not subject to reasonable dispute," see Federal Rules of Evidence, Rule 201(b); *Transworld Airlines Inc.* v. *Hughes,* 308 F.Supp. 679, 684 (S.D.N.Y., 1969), aff'd 449 F.2d 51, (2d Cir. 1971), rev'd on other

veil of Amoco Tankers and rewrite the contract to substitute Amoco International as the purchaser of the Amoco Cadiz, Astilleros submits this Reply Brief.

I.

PROPERTY DAMAGE CLAIMS OF FRENCH PLAINTIFFS, DUE TO ALLEGED NEGLIGENCE IN SPAIN, DO NOT ARISE FROM CONTACTS WITH LIBERIANS IN CHICAGO EIGHT YEARS EARLIER.

The central constitutional issue in this case is whether property damage claims of French plaintiffs arise from the execution of a contract in Illinois between Astilleros and Amoco Tankers eight years earlier; whether it was foreseeable and predictable when Astilleros executed the contract in 1970 to build the Amoco Cadiz, that subsequent alleged negligence in Spain, coupled with injuries suffered in France, would result in jurisdiction in Chicago. (Claims for breach of contract were to be arbitrated in London.)

Neither the Cotes du Nord nor the Amoco parties really address this issue, and neither cite any authority holding that the constitutionally required nexus between contact and cause of action is present on the facts of this case. Instead, the Respondents emphasize only Astilleros' contacts with Illinois, as if those contacts were alone sufficient, and rely on a clever phrase, "lies in the wake," taken from an otherwise irrelevant Illinois

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[1] (Continued)

grounds, 409 U.S. 363 (1973). However, should this Court choose to consider matters outside the record, Astilleros has included the Haddow testimony and the Martinez affidavit, as an Appendix to this Reply, so this Court can determine for itself the misleading nature of the Amoco statement of facts.

Appellate Court decision. In *Koplin* v. *Thomas, Haab & Botts*, 73 Ill.App.2d 242 (1st Dist., 1966) the Illinois Appellate Court upheld long arm jurisdiction over a non-resident which had sold 90 option contracts to 50 Illinois residents. The sales themselves allegedly violated an Illinois gambling statute, giving rise to the lawsuit. Thus, the jurisdictional acts, without more, constituted the cause of action. In that context, after noting that the Illinois long arm statute required a "close relationship" between forum activity and cause of action, (73 Ill.App.2d 252) the Court coined the phrase "lies in the wake." *Koplin* does not establish that there is a "close relationship" between the execution of a contract in Illinois and an oil spill eight years later and thousands of miles away, nor does it extend the Due Process clause to cases such as this one.

II.

THE AMOCO PARTIES HAVE MISREPRESENTED THE FACTS, AND IMPROPERLY SOUGHT TO SUPPLEMENT THE RECORD, TO FABRICATE CONTRACTS WITH AMOCO INTERNATIONAL.

In an attempt to divert the court's attention from the constitutional issues, the Amoco parties improperly seek to supplement the record, and misrepresent both the record and the supplement.

Thus, Amoco asserts (pp. 4, 7) that Astilleros negotiated the Amoco Cadiz contract in Chicago with Haddow, citing Haddow's trial testimony and paragraph 3 of Wren's affidavit. It asserts (page 7) that Astilleros had executed contracts *with Amoco International* to build two other ships, citing Wren's affidavit.

Neither Haddow's testimony nor Wren's affidavit support these statements. Haddow testified that he participated in negotiations with Astilleros *in New York* and *in Spain*, and it is a fair inference that those negotiations related to the Amoco Cadiz, although Haddow does not say so. Haddow did not testify to any negotiations with Astilleros in Chicago *at any time, about any ships.*

Wren's affidavit does not even mention Haddow.

The assertion that contracts for two other ships were between Astilleros and Amoco International is false. Those contracts were between Astilleros and Amoco Transport, (App. p. 101).

Amoco asserts (p. 5) that a second agreement was signed in Chicago in July of 1970 "by Haddow of Amoco International," despite the fact that the "agreement," actually a one page letter, was signed on behalf of Amoco Tankers (App., p. 101). Amoco asserts (page 14) that in two years Astilleros executed, in Illinois, "along with Amoco International," at least four separate contracts. The statement is false. Amoco International executed *no contracts* with Astilleros. The first two contracts were with Amoco Transport, and the last two with Amoco Tankers.

The Amoco Parties' improper and inaccurate reliance on matters outside the record does not end with Haddow. They also rely on an affidavit of Martinez, in a case filed in New York, but do not even acknowledge that the Martinez affidavit is not a part of this record (Amoco Br., p.3, n.2). The Amoco Parties assert (p. 8) that in 1971 Astilleros opened a New York office to solicit business in the United States. Martinez's affi-

davit states however that the attempt to solicit business was in New York, and adds that no business was ever obtained through that office. The Amoco Parties refer to a purported appointment of Mr. Wheeler to solicit business "throughout the United States." The Martinez affidavit contains no such language, and states that Wheeler never obtained any ship construction contracts for Astilleros.

The attempts of the Amoco Parties to mislead this Court about the facts necessarily reflect their concern that the record before this Court, accurately stated, does not permit the assertion of jurisdiction over Astilleros, consistent with Due Process.

III.

IT IS IMPROPER AND CONTRARY TO LONG ESTABLISHED LEGAL PRINCIPLES TO PIERCE THE CORPORATE VEILS OF MAJOR CORPORATIONS, SUA SPONTE, TO ENABLE THOSE CORPORATIONS TO OBTAIN JURISDICTION OVER AN ALIEN CORPORATION.

Through misstatement of the record and improper (and inaccurate) reference to matters outside the record, the Amoco parties attempt to do the same thing the Seventh Circuit did; pierce corporate veils and substitute a new party to the Amoco Cadiz contract. The Amoco parties state repeatedly that Astilleros signed contracts with Amoco International when they know that not to be the case. They insist that all negotiations concerning the Amoco Cadiz were with Amoco International, when it is clear that, to the extent Amoco International employees were involved, they were acting as agents for Amoco Tankers rather than on behalf of International.

Yet while piercing their own corporate veils and substituting new contracting parties themselves, the Amoco parties (and the Cotes du Nord parties as well) insist that the Seventh Circuit's identical actions were unnecessary. Apparently in Respondents' view a substantial portion of the Seventh Circuit's opinion served no purpose.

Apart from the fact that Courts of Appeal do not routinely write opinions without purpose, a reading of the opinion reveals that piercing the corporate veils was critical to the Seventh Circuit's result. Judge Posner, after piercing the corporate veils of Standard, Amoco International, Amoco Transport and Amoco Tankers, stated (Op., p. 6) that negotiating and signing a contract "in the purchaser's domicile" satisfied the first requirement of the Illinois long arm statute. But since Illinois was the purchaser's domicile only after piercing corporate veils and finding that Standard Oil was the purchaser, it necessarily follows that the first requirement of the statute was satisfied only by piercing the corporate veils. No Respondent contests Astilleros' assertion (Pet., pp. 19-23) that the piercing of corporate veils in the circumstances of this case is without precedent in American jurisprudence, and is contrary to established legal principles.

IV.

IN NEITHER THIS CASE NOR HELICOPTEROS DID THE PLAINTIFFS DEAL WITH THE ALIEN DEFENDANT IN THE FORUM STATE. THE TWO CASES THUS RAISE SIMILAR ISSUES.

The Amoco parties urge that there is no relationship between this case and *Helicopteros* because the Peruvian

defendant there "never once had any dealings with the plaintiffs in Texas," (Amoco Brief, p. 24). Far from distinguishing *Helicopteros,* this points up the similarity, since it is uncontested that here, the French plaintiffs "never once had any dealings" with Astilleros in Illinois. Likewise, three of the four Amoco parties do not even claim to have had dealings with Astilleros in Illinois relating to the Amoco Cadiz, and the fourth (Amoco International) dealt with Astilleros only in the sense that certain of its employees were acting as agents for Amoco Tankers, which is not a plaintiff. If Astilleros is not subject to jurisdiction as to the complaints of the French, then it is not a party and cross claims may not be asserted against a non-party.

V.

CONCLUSION

The principal constitutional issue presented by this case is whether Astilleros' Illinois activities vis-a-vis the Amoco Cadiz give rise to the suits pending here.[2]

As stated in Astilleros Petition, if jurisdiction is proper here, not only is it necessarily predicated only on the exe-

[2] Many of the contacts relied on by Amoco do not even relate to the Amoco Cadiz, much less to the causes of action. Thus the grounding of the Amoco Cadiz did not arise out of contracts to build other ships, as the District Court properly held (App. to Pet., p. 7a). It did not arise out of discussions regarding liquid natural gas ships which were never built. It did not arise out of unsuccessful solicitations by Astilleros to build other ships, or out of letters, phone calls or visits relating to contracts never consummated (Amoco Br. pp. 7,8).

cution of a contract in Illinois, making jurisdiction a simple mechanical test, but jurisdiction on such facts permits tort claims brought at any time by non-resident plaintiffs injured anywhere in the world as a result of non-forum negligence involving the subject matter of a contract to be brought where the contract was executed. Neither the Due Process clause, the decisions of this Court nor the Illinois long arm statute permit such a result.

Furthermore, that result relies on an unprecedented piercing of corporate veils. Long standing principles of corporate law should not be cast aside, and the Due Process Clause extended beyond existing case law, all to enable Standard Oil to "get at" an alien corporation (699 F.2d 909, 915).

Astilleros Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: SEPTEMBER 2, 1983

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APPENDIX

4338 Q. Would you give us your—excuse me— would you give us your age, please?

A. Yes, I'm 60 years old.

Q. And can you give us a brief summary of your professional experience before you joined AMOCO International Oil Company?

A. Yes. I am a graduate of California Maritime Academy as well as the University of California at Berkeley. On graduation from California Maritime Academy in 1941—1942, I went to sea for five years for Moore-McCormack Lines, leaving Moore-McCormack Lines as a chief engineer.

Went back—went to the University of California at Berkeley, graduated from the University of California with a Bachelor of Science degree. Went to work for the Tidewater Oil Company, which subsequently became the Getty Oil Company, in the Marine Department, and rose to head the—to become manager of the Marine Transportation Department for Getty Oil Company, and left them in 1964 for AMOCO International or American International Company, and left American International Oil Company in 1975 and joined Burmah Oil Tankers; was president of Burmah Oil Tankers until September—do you want this to go on beyond the AMOCO?

Q. No.

4339 I take it—well, you have—you left AMOCO International Oil Company in 1975, I take it, and—

A. That's right.

Q. —and you have not had any connection with that company since, is that correct?

A. That's right.

Q. Your seagoing experience, I take it, was in the engineering department?

A. That's right.

4340 Q. And you sailed up to and including the position of chief engineer on ocean-going vessels?

A. Yes.

Q. Now will you describe generally what your duties were with AMOCO International Oil Company in the spring of 1970?

A. I was the manager of the group's marine operations involving approximately 15 vessels owned and chartered, developing outside employment for the vessels as well as maintaining and administering the employment internally of the vessels.

Q. All right. Did you have any responsibility in connection with the acquisition of new vessels?

A. Yes.

Q. And tell us generally what your responsibilities were in that area?

A. On the basis of tonnage forecasts, I would recomment to management the acquisition of new tonnage, either new buildings or charter tonnage.

Q. Do you recall the ordering of two V.L.C.C. tankers which—to be constructed by Astilleros Espanoles in Spain?

A. Yes, I do.

Q. And were there altogether four such tanker that were constructed by Astilleros for AMOCO?

4341 A. It was five.

Q. Five. Do you recall that there were four bearing Hulls Number 93 through 96, which were of similar design?

A. I don't remember the numbers, but the vessels were similar in design.

Q. And was one of those the AMOCO Cadiz?

A. One of what?

Q. One of the vessels of similar design—

A. Yes.

Q. —ordered from Astilleros?

A. Yes.

Q. Did you play any part in the placement or the negotiation of a contract with Astilleros for the first two V.L.C.C. vessels for AMOCO?

A. Yes, I did.

Q. And would you describe what part you played in that—in arranging that contract?

A. Initially it was the development of a crude barter arrangement with the Spanish government authorities in which we were willing to build two vessels, V.L.C.C.s, in Spain providing we could pay for the vessels in crude oil.

Subsequent to the agreement by the Spanish government authorities on the barter arrangement, I with my team entered into negotiations with Astilleros Espanoles

4342 for the construction of two V.L.C.C.s.

Q. Was there a staff under your direction occupied with the question of design, size, specifications, and so forth, of these vessels?

A. Yes, there was.

Q. And could you describe to us what that staff consisted of, how many professional people were involved, what their names and qualifications were?

A. You mean technical people?

Q. Yes.

A. Well, the technical staff was headed up by a man called Robert Sawyer, a graduate naval architect. There was Captain Phillips, the manager of Operations, and myself, as well as backup staff as far as the economic evaluation analysis was concerned.

Q. Other than Mr. Sawyer, were there any other naval architects on your—on the staff concerned with this—in this matter?

MR. HALLER: The question, "Are we talking about the same time frame?" I said, "Yes."

BY THE WITNESS: (Reading)

"A. Yes, there was a man called Joe Wren.

BY MR. HALLER: (Reading)

"Q. Did Mr. Sawyer report directly to you?

A. Yes, he did.

4343 Q. And do you recall what his title or job designation was?

A. He was manager of engineering and technical services.

Q. And was he also—was he in the employ of AMOCO International Oil Company?

A. Yes, he was.

Q. Let me show you a paper which has previously been marked Claimants' Exhibit 1732, and take a moment if you wish to look it over.

My question will be whether you recall having received a memorandum from Mr. Sawyer of which that is a copy?

A. I don't remember receiving the letter.

4344 Q. Do you recall a proposal to have a model constructed for the purposes and tested for the purposes indicated in this memorandum?

A. Yes, I do.

Q. Was that done?

A. Yes.

Q. Was that—was the model constructed by the Netherlands Ship Model Basin at Wageningen, if I pronounce it correctly?

A. It was my understanding it was.

Q. And did you know in April 1970, whether Astilleros had had previous experience building ships of the size of the V.L.C.C.s?

A. I knew that they did not have.

Q. Was it your understanding that the first two V.L.C.C.s ordered by AMOCO would be the first ships of that size to be constructed by Astilleros?

A. I forget the time frame, but at one stage I knew they would be the second and third.

Q. Let me show you what has been marked Claimant's Exhibit 1226 and ask you whether you recall that letter having come to your attention back in May or June of 1970?

A. I remember the proposal.

Q. The first sentence of the letter begins, 'Fur-

4345 ther to the conversations held with you during your recent visit to Madrid.'

I will observe parenthetically that the letter is not addressed to any one individual by name. My question, sir, is whether you participated in conversations in Madrid shortly before the date of this letter?

A. I believe that's correct.

Q. Do you remember who else, if anyone,from AMOCO participated in those discussions?

A. If anyone else participated, it would have been Bob Sawyer and possibly Alberto Rivas.

Q. Who was Alberto Rivas?

A. A naval architect that joined our staff subsequent to the initial discussions on the construction of the first two vessels.

Q. And was he an employee of AMOCO International Oil Company?

A. Yes, he became a—

Q. Speaking now of May 1970?

A. I don't remember.

Q. Now, were you a corporate officer of AMOCO International Oil Company in May 1970?

A. What is a corporate officer?

Q. Like a president, a vice-president, or secretary or

4346 treasurer, or something like that.

A. Yes, I was a vice-president.

Q. The letter which is identified as Claimant's Exhibit 1226 is addressed to AMOCO Transport Company, and my question to you is: Do you know, or first, were you an officer of AMOCO Transport Company at that time?

A. I believe I was.

Q. During the conversations in Madrid preceding this letter, was it suggested to the Astilleros people by yourself or anyone else from AMOCO that their proposal should be addressed to AMOCO Transport Company?

A. Not to my recollection.

Q. Do you have any present recollection—withdrawn. Do you remember the corporate name of the company that had contracted with Astilleros for the first two AMOCO V.L.C.C.s?

A. No.

Q. Mr. Haddow, I show you a memorandum dated June 9, 1970, which we have marked for identification as Sullivan Number 1—"

MR. HALLER: We have this, can you supply me with the trial designation?

MR. VELTMAN: C 1731.

MR. HALLER: It will be offered as Claimant's

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRETAGNE-ANGLATERRE-IRLANDE, S.A., (Society Anonymous) a French Corporation, d/b/a BRITANNY FERRIES, for itself and on behalf of all others similarly situated, *et al.*,

Plaintiffs,

- against -

ASTILLEROS ESPANOLES, S.A.,

Defendant.

78 Civ. 4945

(Judge Motley)

KINGDOM OF SPAIN)
) ss.:
CITY OF MADRID)

AFFIDAVIT

EDUARDO GARCIA MAURINO MARTINEZ, being duly sworn, deposes and says:

1. I am Director, Legal Services, of Astilleros Espanoles, S.A. (hereinafter referred to as "Astilleros") and make this affidavit in connection with Astilleros' motion for dismissal of the above suit on grounds of lack of personal jurisdiction, insufficiency of service of process, and *forum non conveniens.*

2. I have been with Astilleros for 19 years, serving as Director of the Legal Department of Cadiz Shipyard from 1959 to 1970, as Director of Shipbuilding Legal Department from 1970 to 1972, and finally as Director of the Legal Department from 1972 to date. My present

duties require me to maintain a thorough understanding of the matters discussed herein and I am, therefore, personally familiar with the facts stated in this affidavit. Some of the statements of fact are based on documents I have reviewed in Astilleros files, and in such instances I have identified where statements of fact herein based on examination of the files.

FACTS RELATING TO THE QUESTION OF WHETHER ASTILLEROS WAS DOING BUSINESS WITHIN THE STATE OF NEW YORK.

3. Astilleros is a Spanish corporation (Sociedad Anonima), engaged in ship construction and ship repair, with its principal place of business in Madrid, and is subject to the jurisdiction of the Spanish courts. All directors and officers of Astilleros are residents and citizens of Spain. Astilleros owns several shipyards, all of which are located in Spain.

4. None of Astilleros' ship construction or ship repair contracts has ever been entered into in New York.

5. In 1971, when it was believed there might be a New York market for ship construction and repair, Astilleros opened an office at 270 Park Avenue, New York City, staffed by a salesman and a secretary. This New York Office was closed in 1976, when it developed that no ship construction or repair contracts were generated by it. Since 1976 Astilleros has neither owned nor leased property or office space in New York. Astilleros is not registered to do business in New York.

6. In October, 1976 Astilleros entered into two contracts with Wesley D. Wheeler of New York. The contracts provided that Mr. Wheeler would act as exclusive representative to Astilleros in seeking to obtain ship construction and repair contracts.

7. The two-year contract relating to representation for ship construction, a copy of which is attached hereto as Exhibit A, terminated on September 30, 1978 and

has not been renewed. Under this contract Mr. Wheeler had no authority to negotiate or enter into contracts on behalf of Astilleros. Mr. Wheeler's sole activity was intended to be to introduce Astilleros to prospective parties interested in new vessel construction, in return for which Mr. Wheeler was to be paid a commission for any vessels built as a result of such introduction. Under this contract Mr. Wheeler also received a retainer of $2,000 per month, to be reduced by any commissions due during such month. Our files show that during the term of this contract Mr. Wheeler did not introduce any customers leading to ship construction contracts for Astilleros, and accordingly he never received any commissions under this contract.

8. The other contract, relating to representation for ship repair contracts, attached hereto as Exhibit B, is similarly structured in terms of Mr. Wheeler's responsibilities. He has no authority to negotiate or enter into contracts on behalf of Astilleros. His sole function has been to refer to Astilleros prospective customers for ship repair. The principal difference between the ship construction and repair representation contracts is that Mr. Wheeler receives no monthly retainer under the repair contract, and any income he might earn under this contract is based solely on commissions paid to him or Astilleros' revenues from performing repair work in Spain on vessels owned or managed by United States companies, whether or not such work was introduced by Mr. Wheeler. During the entire year 1978 Mr. Wheeler was paid commissions in the total amount of $14,657.37 as a result of repair work performed by Astilleros on vessels owned or managed by United States companies. The revenues on which these commissions were based amounted to 0.002471% of Astilleros provisional calculation of gross revenues for 1978.